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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1912.

No. [redacted] 41.

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BROOKE P. TAYLOR, NANNIE M. McCORMICK, ROSALIE McCORMICK, ET AL., APPELLANTS,

*vs.*

COLUMBIAN UNIVERSITY (NOW KNOWN IN LAW AS GEORGE WASHINGTON UNIVERSITY) AND JOHNS HOPKINS UNIVERSITY.

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APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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FILED APRIL 29, 1910.

(22,130)

# (22,130)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1910.

## No. 522.

BROOKE P. TAYLOR, NANNIE M. McCORMICK, ROSALIE McCORMICK, ET AL., APPELLANTS,

*vs.*

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INDEX.


| | Page. |
|---|---|
| Caption | 1 |
| Transcript from the supreme court of the District of Columbia | 1 |
| Caption | 1 |
| Bill of complaint | 2 |
| Answer of George Washington University | 9 |
| Separate answer of Johns Hopkins University | 12 |
| Depositions on behalf of complainant | 14 |
| Deposition of Rebecca C. Powell | 14 |
| Exhibit R. C. P. No. 1—Genealogies | 35 |
| Dr. Charles W. Needham | 44 |
| Catalogue announcements | 45 |
| Howard L. Hodgkins | 52 |
| William Allen Wilbur | 56 |
| Charles W. Needham (recalled) | 59 |
| Complainant's exhibits | 61 |
| Application for admission to division of architecture of Ralph Earle Sampson | 61 |


JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 13, 1910.

| | Page |
|---|---|
| Notice to Mr. Swett of award of Powell scholarship | 63 |
| Record of Ralph Earle Sampson | 63 |
| Letter from Charles W. Needham to Mr. Sampson granting request for Powell scholarship in college of engineering | 63 |
| Application of Fabian P. Noel for admission to Columbian University | 64 |
| Notice of assignment of Powell scholarship to Fabian P. Noel | 65 |
| Letter from W. H. Lantz, chief engineer Naval Reserves, N. G. D. C., in behalf of Noel | 64 |
| Letter of Fabian P. Noel to Wm. A. Wilbur, dean, requesting Powell scholarship | 66 |
| Circular letter relating to appointment of warrant machinists | 66 |
| Application of Thomas Louis Shannon for admission as a special student | 68 |
| Memorandum for Mr. Swett | 69 |
| Admission blank for special students | 69 |
| Letter from John Doyle Carmody to Otis D. Swett in behalf of Thomas Shannon | 69 |
| Application of August R. F. Brandes for admission as student to department of arts and sciences | 69 |
| Memoranda presented with seaman's papers by A. R. F. Brandes | 70 |
| Application of August R. F. Brandes for admission to the courses specified in application | 71 |
| Application of August R. F. Brandes for admission to Columbian College | 71 |
| Certificate of Truman H. Newberry | 73 |
| Letter from C. W. Rae to J. K. M. Norton in regard to appointments | 73 |
| Letter from G. A. Converse to J. K. M. Norton in regard to appointments from list enclosed | 74 |
| Certificate of Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia | 74 |
| Depositions on behalf of defendant | 75 |
| Defendant's Exhibit A—Certificate of incorporation of Johns Hopkins University | 75 |
| Defendant's Exhibit B—Acts of 1867, chapter 379 | 76 |
| Opinion of court by Mr. Justice Gould | 78 |
| Decree dismissing bill; appeal | 80 |
| Memorandum: Appeal bond filed | 80 |
| Directions to clerk for preparation of transcript of record | 80 |
| Clerk's certificate | 81 |
| Minute entry of submission | 82 |
| Opinion by Shepard, C. J. | 82 |
| Decree | 86 |
| Order allowing appeal | 86 |
| Appeal bond | 86 |
| Citation and service | 88 |
| Clerk's certificate | 88 |

# In the Court of Appeals of the District of Columbia.

No. 2098.

BROOKE P. TAYLOR et al., Appellants,
vs.
COLUMBIAN UNIVERSITY et al.

a Supreme Court of the District of Columbia.

In Equity. No. 24288.

BROOKE P. TAYLOR, NANNIE M. MCCORMICK, ROSALIE MCCORMICK, William S. Powell, Sarah H. Powell, Susan P. Cottman, Cordelia P. Odenheimer, Francis W. Powell, and Cordelia Ellen Powell and Virginia Brooke Powell, the Latter Two Being Infants under the Age of Twenty-one Years, by Their Next Friend and Guardian, Susan P. Cottman; Ella P. Stearns, Cuthbert Powell, Son of Cuthbert Powell; and Mary Powell and Louise Powell, the Latter Two Being Infants under the Age of Twenty-one Years, by Their Next Friend and Guardian, John L. Stearns; Llewellyn Powell, Mary C. Scott, Henry Harrison, Rebecca C. Powell, Selina L. Hepburn, Mary P. Adie, Ellen G. Adie, Cuthbert Adie, Tomasia A. Allison, Charles A. Adie, George A. Pope, Stanley E. Swanton, C. Powell Grady, Edward K. Grady, Lucia Grady, Cuthbert Powell, Son of John Simms Powell; E. Lee Powell, Kate S. Powell, Eleanor P. Potts, Sallie Lee Powell, Simms Powell, Laura P. Roberts, Charles L. Powell, Fannie P. Gordon, Ellen Douglass Smith, Roberta S. Weaver, and Channing M. Smith, Complainants,

vs.

THE "COLUMBIAN UNIVERSITY," a Corporation, Duly Incorporated, and the "JOHNS HOPKINS UNIVERSITY," a Corporation, Duly Incorporated, Defendants.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to-wit:

1 *Bill.*

In the Supreme Court of the District of Columbia, an Equity Court for Said District.

Filed Nov. 6, 1903.

Equity. No. 24288.

BROOKE P. TAYLOR, NANNIE M. MCCORMICK, ROSALIE MCCORMICK, William S. Powell, Sarah H. Powell, Susan P. Cottman, Cordelia P. Odenheimer, Francis W. Powell, and Cordelia Ellen Powell and Virginia Brooke Powell, the Latter Two Being Infants under the Age of Twenty-one Years, by Their Next Friend and Guardian, Susan P. Cottman; Ella P. Stearns, Cuthbert Powell, Son of Cuthbert Powell; and Mary Powell and Louise Powell, the Latter Two Being Infants under the Age of Twenty-one Years, by Their Next Friend and Guardian, John L. Stearns; Llewellyn Powell, Mary C. Scott, Henry Harrison, Rebecca C. Powell, Selina L. Hepburn, Mary P. Adie, Ellen G. Adie, Cuthbert Adie, Tomasia A. Allison, Charles A. Adie, George A. Pope, Stanley E. Swanton, C. Powell Grady, Edward K. Grady, Lucia Grady, Cuthbert Powell, Son of John Simms Powell; E. Lee Powell, Kate S. Powell, Eleanor P. Potts, Sallie Lee Powell, Simms Powell, Laura P. Roberts, Charles L. Powell, Fannie P. Gordon, Ellen Douglass Smith, Roberta S. Weaver, and Channing M. Smith, Complainants,

vs.

THE "COLUMBIAN UNIVERSITY," a Corporation, Duly Incorporated, and the "JOHNS HOPKINS UNIVERSITY," a Corporation, Duly Incorporated, Defendants.

The complainants state as follows:

1. That they are all citizens of the United States, that the Complainant, Brooke P. Taylor, is a resident of Danville, in the State of Virginia; Nannie M. McCormick and Rosalie McCormick, are residents of Clarke County in the State of Virginia; William S. Powell, Sarah H. Powell, Susan P. Cottman, Cordelia P.

2 Odenheimer, Francis W. Powell, Cordelia Ellen Powell and Virginia Brooke Powell, the latter two who are infants under the age of twenty-one years, and sue by their next friend and guardian, Susan P. Cottman, are residents of Baltimore in the State of Maryland; Ella P. Stearns, Cuthbert Powell, son of Cuthbert Powell, Mary Powell and Louise Powell, the latter two who are infants under the age of twenty-one years, and sue by their next friend and guardian, John L. Stearns, are residents of Denver, in the State of Colorado; Llewellyn Powell, is a resident of Alexandria, in the State of Virginia; Mary C. Scott and Henry Harrison are residents of Loudoun County, in the State of Virginia; Rebecca C. Powell, is a resident of Alexandria, in the State of Virginia; Selina L. Hep-

burn is a resident of Hanover County, in the State of Virginia; Mary P. Adie, Ellen G. Adie, Cuthbert Adie, Tomasia A. Allison, George A. Pope, and Stanley E. Swanton, are residents of San Francisco, in the State of California; Charles A. Adie, is a resident of Portland, in the State of Oregon; C. Powell Grady is a resident of the District of Columbia; Edward K. Grady and Lucia Grady are residents of Baltimore in the State of Maryland; Cuthbert Powell, son of John Simms Powell, is a resident of Kansas City in the State of Missouri; E. Lee Powell is a resident of Richmond in the State of Virginia; Kate S. Powell, Eleanor P. Potts, and Sallie Lee Powell, are residents of Shepherdstown, in the State of West Virginia; Simms Powell, Laura P. Roberts, and Charles L. Powell, are residents of Parkersburg, in the State of West Virginia; Fannie P. Gordon is a resident of Baltimore, in the State of Maryland; Ellen Dou-
3 lass Smith, Roberta S. Weaver and Channing M. Smith, are residents of the County of Fauquier, in the State of Virginia.

II. That the Defendant, "The Columbian University" is a corporation, duly incorporated under the laws of the United States, conducting its business as such in the City of Washington, District of Columbia.

III. That the Defendant the "Johns Hopkins University" is a corporation, duly incorporated under the laws of the State of Maryland, conducting its business as such in the City of Baltimore in the State of Maryland.

IV. That a certain Levin M. Powell, late of the City of Washington, District of Columbia, who had been for many years, an officer in the navy of the United States, and who, at the time of his death, was an Admiral, on the retired list of said navy, departed this life on the 15th day of January, A. D. 1885. That the said Levin M. Powell, at the time of his death, was seized and possessed of, and was the lawful owner in fee simple, by purchase, of the premises, numbered 1707 I Street, Northwest, in the City of Washington, District of Columbia, being all those certain pieces or parcels of ground situate and lying in said City of Washington, and known and distinguished on the plats of said City as Lot lettered C, and the east five feet from front to rear of lot D, of Samuel D. King's sub-division of lots numbered one, (1), two (2), three (3), thirty-two (32),
4 and thirty-three (33), in square numbered one hundred and twenty six (126), duly recorded in the surveyor's office of said City, beginning for the said parcels at a point on I Street, north, distant seventy-eight (78) feet west from the corner of I and 17th Street, and running thence north parallel with 17th Street one hundred and five (105) feet to a fifteen foot alley; thence west with said alley thirty-five (35) feet; thence south one hundred and five (105) feet to the north line of said I Street; thence east with said I Street thirty-five (35) feet to the point of beginning, together with all and singular the improvements, rights, privileges, and appurtenances to the same belonging. A copy of the deed conveying said property to said Levin M. Powell, is filed herewith, marked Exhibit No. 1, and which it is prayed may be taken and considered as a part hereof.

V. That the said Levin M. Powell left surviving them no child or descendant; no brother or sisters of the whole blood or the half blood and no descendant from any such brother or sister; no father, no mother, nor grand father, but did leave descendants of his grand father on the paternal side, as follows, to-wit:

1. Ann M. Powell, 2. Charles Levin Powell, 3. Mary E. Adie, 4. Cuthbert H. Powell, 5. Jane P. Norris, 6. John Simms Powell, 7. Levin Powell, 8. Fannie P. Gordon, 9. Ellen Chilten Smith, all being first cousins, and the nearest blood relations on the paternal side to take under the Statute of Descent, in force in the District of Columbia, who were the next of kin, and the only heirs at law surviving him at the time of his death, all being of the whole blood.

5 VI. (*a*) That the said Ann M. Powell has departed this life, leaving the following descendants and heirs at law: Brooke P. Taylor, Nannie M. McCormick and Rosalie McCormick, grand children, who were the children and heirs at law of Mrs. Lawrence B. Taylor, a deceased daughter. William S. Powell, Sarah H. Powell, Susan P. Cottman, Cordelia P. Odenheimer and Francis W. Powell, grand children, being the children of Edward B. Powell, a deceased son, and Cordelia Ellen Powell and Virginia Brooke Powell, being great grandchildren of the said Ann M. Powell, deceased, children and heirs at law of Brooke Powell, a deceased son of the said Edward B. Powell. Ella P. Stearns, Cuthbert Powell, Mary Powell and Louise Powell, grand-children of the said Ann M. Powell, being the children of Cuthbert Powell, a deceased son. LLewellyn Powell and Mary C. Scott Grand-children, being the children of Robert C. Powell, a deceased son. Henry Harrison, a grand-son, being the child of Nannie P. Harrison, a deceased daughter.

(*b*) That the said Charles Levin Powell has departed this life, leaving as his only heirs at law two daughters Rebecca C. Powell and Selina L. Hepburn.

(*c*) That the said Mary E. Adie has departed this life leaving as her only heirs at law Mary P. Adie, Ellen G. Adie, Cuthbert Adie, Tomasia A. Allison and Charles A. Adie, children, and George A. Pope and Stanley E. Swanton, grand-children, being children of Margaret Adie, a deceased daughter.

(*d*) That the said Cuthbert H. Powell has departed this life, leaving no children or other heirs at law than those named as Complainants in this bill.

6 (*e*) That the said Jane P. Norris has departed this life, leaving as her only heirs at law, C. Powell Grady and Edward K. Grady, children, and Lucia Grady, a grand-child the only child of Francis Grady, a deceased son.

(*f*) That the said John Simms Powell has departed this life, leaving as his only heirs at law Cuthbert Powell, E. Lee Powell, Kate S. Powell, Eleanor P. Potts, Sallie Lee Powell, Simms Powell, Laura P. Roberts and Charles L. Powell, his children.

(*g*) That the said Levin Powell has departed this life, leaving no children or heirs at law except the said complainants.

(*h*) That the said Fannie P. Gordon is still living.

(*i*) That the said Ellen Chilten Smith has departed this life, leaving as her only heirs at law Ellen W. Smith, Roberta S. Weaver and Channing M. Smith, her children.

VII. That said Levin M. Powell did, by the Fifth (5th) clause of his last will and testament, of date October 27, A. D., 1884, and which has been duly admitted to probate in the said District, devise said hereinbefore particularly described premises and real estate as follows:

ITEM: Fifth, it being my wish and desire to make some contribution to the Navy of the United States of which I have been for so many years, I hope, a worthy member, and so in a measure to pay off the debt I feel I owe the honorable profession I have pursued through a long lifetime, and to that end to establish in the Columbia University in the District of Columbia, in a manner most
7 conducive for that purpose *a means for the education of such young men as may be willing to profit therefrom in the branches of education best fitted to prepare them for officers of the line in the navy of the United States, or for the places of mates or captains in the Merchant Marine Service of the United States.* I do hereby give, devise, and bequeath to the said Columbian University and its successors all those certain pieces or parcels of ground situate and lying in said City of Washington, and known and distinguished on the plats of said City as lot lettered C, and the east five feet from front to rear of lot D, of Samuel D. King's Sub-division of lots numbered one (1), two (2), three (3), thirty-two and thirty-three (33) in square numbered one hundred and twenty-six (126) duly recorded in the surveyor's office of said City, beginning for the said parcels at a point on I Street north, distant seventy-eight (78) feet west from the corner of I and 17th Street, and running thence north parallel with 17th Street one hundred and five (105) feet to a fifteen foot alley; thence west with said alley thirty-five (35) feet; thence south one hundred and five (105) feet to the north line of said I Street; thence east with said I Street, thirty-five (35) feet to the point of beginning, together with all and singular the improvements, rights, privileges and appurtenances to the same belonging, *in trust for the purposes following, and for no other purpose whatever*—that is, in trust to create an endowment to be known as the Admiral Powell endowment, and with that view to take the said property, and the same to rent from year to year or to lease for a term of years as to the trustees and overseers of said University shall seem best; and the rents, issues, and profits arising therefrom, after first pay-
8 ing out of the same the taxes, insurance, repairs, and other expenses, to devote as far as the same will go, under such regulations as to the said trustees and overseers may seem best, *to the free education of such young men as may desire to take advantage of the said endowment by way of their preparation for entrance into the Naval Academy at Annapolis, Maryland, or such as may fit them to become mates or masters in the Merchant Marine Service of the United States, such preparation to be confined in the case of each young man so embracing the advantages of the said endowment to one year, and to include principally the studies following—that is to*

*say, arithmetic, geometry, trigonometry, and astronomy, with the use of astronomical instruments, the construction of charts, and the application of this knowledge to hydrographical survey by latitude and longitude, and if possible such study as will give to such young men a knowledge of Scientific voyages of discovery, and other matters relating to war and commerce on the high seas, and it is further my desire that this endowment shall, if possible, embrace in its benefits such apprentices as having filled their time in the great steam manufactory establishments of the country may apply for appointment from civil life in the steam engineer department of the United States Navy, to such I would like to have a year's education afforded under such regulations* as the president and faculty of the university may think proper. And should it at any time for any reason be impossible to carry into effect the trusts, provisions, and conditions having relation to and herein imposed upon this bequest by
9 me made for the creation of the endowment described on the part of the said Columbian University, or should it be made manifest at any time that the said trust is not being administered in accordance with my wishes and desires, and in conformity with the conditions specified, then and in such case it is my will and desire that the said endowment shall be placed in other hands, and to that end and upon the happening of the contingency mentioned, I do hereby give, devise and bequeath the said property to the Johns Hopkins University of Baltimore, in the State of Maryland, and its successors, to be taken and held by the said University or the officers thereof proper for that purpose, upon the trusts and for the purposes hereinbefore particularly set forth in the bequest of said property to the Columbian University, in such manner that the purposes of the said endowment as by me indicated may be fully carried into effect", as will more fully and particularly appear by reference to a certified copy of said will herewith filed as Exhibit No. 2, and which it is prayed may be taken and considered as a part hereof.

VIII. That acting upon its supposed right, under said devise, the said defendant, the "Columbian University", some time in the year 1885, took possession of said premises and real estate upon the trust set forth in said will and has had and retained absolute possession of the same ever since as it does now, having had the same rented to various tenants during said time.

IX. That said defendant the Columbian University, issues and has for more than sixteen years issued a catalogue, publishing its classes, the names of all its students its instructors and officers, and
10 the many and various schools of education it maintains, that this catalogue is widely circulated throughout the United States, that among other things it has from time to time, during the past sixteen years, advertised "The Powell Scholarship", that such advertisement was contained in the said catalog for the scholastic years 1900 and 1901, as will more particularly appear by reference to pages 94 and 95 of said catalogue, which is herewith filed as Exhibit No. 3, and which it is prayed may be taken and considered as a part hereof. That substantially the same advertisement had been

inserted in said catalogue issued from time to time for the past sixteen years.

That notwithstanding the said wide circulation of said advertisements the said defendants, complainants are informed, believe, and therefore charge, has been wholly unable to execute said trust.

X. That the complainants are advised and therefore charge and allege that said devise is so indefinite and the trust intended to have been created thereunder so uncertain as to its objects and subjects that is was impossible of execution by said defendant, the "Columbian University", or by the said defendant, the "Johns Hopkins University", has in no wise been executed by either of them in any respect whatsoever, and that it is now and ever will be impossible of execution by either of them.

XI. That the complainants are advised and therefore charge and allege that by reason of the indefiniteness of the purposes of said intended trust, and the hopeless uncertainty of the possible
11 beneficiaries, "who may desire to take advantage of said endowment," the said devise and the trust sought to have been created thereunder is wholly void and of none effect.

XII. That complainants are advised and therefore charge that the defendants are without authority to carry said trust into execution.

XIII. The said defendant, the "Columbian University", has collected all the rents, issues and profits arising from said property, from and since the time it took possession of the same as aforesaid to the present time, amounting to a large sum of money, the total amount of which the complainants do not know, and have no means of knowing, unless said defendant is directed by a decree of this court to state and render a full accounting thereof. And the complainants call upon the defendants to answer under oath, and state the exact amount of rents, issues and profits collected from said property by said defendant, the "Columbian University".

XIV. The complainants are advised and therefore charge that they are, as the next of kin and only heirs-at-law of said Levin M. Powell, lawfully entitled and should be decreed to be the owners of said hereinbefore particularly described real estate, and to all the rents, issues and profits collected therefrom by said defendant, the "Columbian University", together with legal interest thereon.

XV. The defendant, the Columbian University, has in
12 its possession the books of account showing the receipts by it of all the rents, issues and profits collected from said real estate and the disposition of the same.

XVI. The complainants have made a lawful demand of said defendants for the possession of said real estate and an accounting of the rents and issues collected by said "Columbian University," before the filing of this bill, which said demand was refused by them.

*Prayers.*

The complainants therefore pray as follows:

1. That said devise as hereinbefore more particularly set out in paragraph seven (7) of this bill being contained in the fifth (5th) clause of said last will and testament of said Levin M. Powell be by

a decree of this Honorable Court decreed absolutely void and of none effect.

And further that the trust or trusts sought to have been created thereunder be declared by a decree of this Honorable Court, wholly void and on none effect whatever—and further that the title both at law and in equity to said hereinbefore particularly described real estate, be declared by said decree to be in the complainants to this cause, to-wit: in Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick, William S. Powell, Sarah H. Powell, Susan P. Cottman, Cordelia P. Odenheimer, Francis W. Powell, and Cordelia Ellen Powell and Virginia Brooke Powell, Ella P. Stearns, Cuth-
13 bert Powell, son of Cuthbert Powell, Mary Powell, Louise Powell, Llewellyn Powell, Mary C. Scott, Henry Harrison, Rebecca C. Powell, Selina L. Hepburn, Mary P. Adie, Ellen G. Adie, Cuthbert Adie, Tomasia A. Allison, Charles A. Adie, George A. Pope, Stanley E. Swanton, C. Powell Grady, Edward K. Grady, Lucia Grady, Cuthbert Powell, son of John Simms Powell, E. Lee Powell, Kate S. Powell, Eleanor P. Potts, Sallie Lee Powell, Simms Powell, Laura P. Roberts, Charles L. Powell, Fannie P. Gordon, Ellen Douglass Smith, Roberta S. Weaver, and Channing M. Smith.

2. That the defendant, the "Columbian University," may be, by an order or decree of this Honorable Court compelled to render a full accounting of all the rents, issues and profits, collected by it from the hereinbefore described real estate, and that it may be ordered to bring into Court all books and papers relating to said collections and to the disposition thereof, that the same may be submitted to the Auditor of this Court to state said account.

3. That said defendant, the "Columbian University," may by the further decree of this Honorable Court be ordered to pay unto the said complainants the full sum found to be due by the determination and decree of said Court, including interest at the legal rate on said rents collected as aforesaid.

4. That all necessary orders and references for the purpose aforesaid be made.

5. That the complainants may have such further and other relief in the premises as the nature of the case may require.

14 To which end the complainants pray for process against the defendants, the "Columbian University," and the "Johns Hopkins University."

The defendants to this bill are:

"Columbian University," a corporation duly incorporated—Washington City.

"Johns Hopkins University," a corporation duly incorporated—Baltimore, Maryland.

NORTON & BOOTHE,
HENRY E. DAVIS,
*Solicitors for Complainants.*

*Answer of the George Washington University.*

Filed Apr. 14, 1905.

In the Supreme Court of the District of Columbia.

No. 24288. In Equity.

BROOKE P. TAYLOR et al.
vs.
THE GEORGE WASHINGTON UNIVERSITY, Formerly Named Columbian University, et al.

The separate answer of "The George Washington University" heretofore styled the "Columbian University" defendant to the bill of complaint of Brooke P. Taylor et al. against it and another in Equity exhibited.

This defendant for answer unto said bill or unto so much thereof as it is advised it is material and proper for it to
15 answer, states and avers as follows:

1. It has no knowledge or information in respect of the complainants, their respective places of residence, citizenship or whether or not they are severally of age, and can neither admit nor deny the same, and so far as the same may be material it requires proof.

2. It admits that the defendant was duly incorporated under the name of "The Columbian University" under the laws of the United States, and that it has been and is now furnishing education in the City of Washington, in the District of Columbia; but it says that on or about the first day of September, 1904 its corporate name was by an act of Congress of the United States changed from "The Columbian University" to the "The George Washington University."

3. It admits that the defendant, the Johns Hopkins University is a body corporate under the laws of the State of Maryland having its habitat in the City of Baltimore in said state.

4. It admits that Levin M. Powell, an Admiral on the retired list of the United States Navy died testate in January, 1885; and that at the time of his death he was seized and possessed of and was the lawful owner in fee simple of premises number 1707 I Street N. W., in the City of Washington District of Columbia, described in the 4th paragraph of the bill; but this defendant has no personal knowledge as to whether or not he acquired said property by purchase and can neither admit nor deny the allegation in that respect made, and if the same is material holds the complainants to strict proof thereof.

16 5. It has no knowledge, information or belief as to whether or not the said Powell left surviving him relatives of any description, nor has it any knowledge, information or belief as to who were the heirs at law or next of kin of the said Powell; and can neither admit nor deny the allegations of the 5th paragraph of

the bill in that regard, and so far as the same may be material, it requires strict proof thereof. But this defendant says that on or about the 23rd day of April, 1902, a number of persons, none of whom are the same as the complainants in this case, and who claimed to be the only heirs at law and next of kin of said decedent, filed a bill in this Court numbered 23274, making substantially the same allegations as are made in the bill in this case, and claiming the same relief as is therein prayed, and that said suit is still pending, and undetermined. And this defendant submits that if the allegations as to heirship in that bill made, are true, then the allegations made in this bill to the effect that the complainants are the only heirs at law and next of kin to whom the title to the real estate herein involved, descended, must be and are untrue.

6. It has no knowledge, information or belief in respect of the death or heirship of the several persons named in the 6th paragraph of said bill; and can neither admit nor deny the allegations in that respect made; and so far as the same may be material, requires strict proof thereof.

7. It admits that said Powell, in and by the 5th paragraph of his last will and testament, which was duly admitted to Probate in this Honorable Court, devised said parcel of land, No. 1707 I
17 Street to this defendant; and it presumes that said devise is properly set forth in the 7th paragraph of the bill, but for greater certainty it prefers that reference should be had to the original will.

8. It admits that as devisee thereof it acquired possession of said parcel of land and has continued in possession thereof, ever since, and has rented the same to various tenants during that time.

9. It admits that it has advertised said Powell Scholarships in its annual catalogue as stated in the 9th paragraph of the bill. It avers that it has, when occasion seemed to make it expedient to do so, varied the character and nature of the references in said catalogue to the said Powell Scholarships, so that they might be called to the attention of prospective students in the way best calculated to promote the aims and objects of the said Powell. It denies that it has been unable to execute the trust aforesaid as alleged in the bill of complaint.

10. It denies that said devise is so indefinite and the trust intended to have been created thereunder so uncertain as to its objects and subjects that it was or is impossible of execution by either of said defendants, and it also denies that the said trust has in no wise been executed by either of said defendants. Furthermore, it avers that the said trust has been judicially declared to be valid and enforcible and susceptible of execution, and that it has been and is now being executed, as will hereinafter more fully appear.

11 and 12. It denies the averments of the 11th and 12th Paragraphs of the bill.

13. It admits that it has rented out said property from
18 time to time when and as it could secure tenants thereof; that it has collected the rents thereof. And it avers that it has paid the taxes and insurance thereon and kept the same in re-

pair, but it denies the right of the plaintiffs to any accounting for the rents, issues and profits thereof, and it is advised by counsel that even if this Honorable Court should decree that the complainants are entitled to an accounting for such rents and profits, it should not hold this defendant liable for any portion of the same collected or accruing prior to three years previous to the date of the filing of this bill; and it prays the same benefit of this defence set up by way of answer, as if it had specifically demurred to this portion of the bill of complaint, or had pleaded this defence thereto.

14. The allegations contained in Paragraph 14 being merely conclusions of law, this defendant is advised that it is not necessary for it to make any answer thereto. But it denies that the next of kin or the heirs at law of the said Powell are lawfully entitled to be the owners of said real estate or to any of the rents, issues and profits collected therefrom, or that any decree should be entered in their favor as claimed in the said paragraph. On the contrary it says that it has for a long period of time, to wit: twenty years last past, been in the actual continuous, open, notorious, visible, exclusive, adverse and hostile possession of said real estate and all of it, with a distinct claim of ownership thereof as its own, and that the complainants, as this defendant is advised, have been guilty of laches in asserting their pretended rights therein or thereto.

15. It admits the averments of the 15th paragraph of the
19 bill.

16. It admits that a demand has been made of this defendant for the possession of the said real estate and an accounting of the rents, and issues collected by this defendant before the filing of said bill, and that such demand — been refused by it.

17. And for a further answer this defendant says that it has appropriated the rents and profits collected from said property towards the purchase of a proper equipment for the prosecution of the educational work entrusted to it by the said Powell by virtue of his last will and testament as hereinabove recited, that it has secured and maintained such an equipment and has provided and maintained at great expense a faculty for teaching the subjects embraced with the terms of said trust: that it has extensively advertised the courses mentioned by the said Powell as those which should be taught from the proceeds of the said devise: that it has been engaged and is now actively engaged in teaching said subjects: and that it proposes to continue so to do and that it will grant free scholarships and in every way perform the duties imposed upon it by the terms of said trust.

18. And further answering this defendant says that it is informed and so avers the fact to be, that its co-defendant the Johns Hopkins University, is able, ready and willing to accept and administer the trusts of said devise at any time if for any reason it should be impossible for this defendant to administer the same, or in case, this defendant should fail to carry out the trust in that regard reposed in it.

20 19. And for a further and complete answer to the bill, this defendant says that it is advised that by the complainants'

own showing, their remedy, if any they have, is one which can be fully, adequately and completely obtained in a court of law.

And having answered said bill fully it prays to be hence dismissed with costs.

WM. F. MATTINGLY.
JNO. B. LARNER,
WALTER C. CLEPHANE,
*Solicitors for Defendant, the George Washington University.*

THE GEORGE WASHINGTON UNIVERSITY.
[SEAL.] By CHAS. W. NEEDHAM, *President.*

DISTRICT OF COLUMBIA, *To wit:*

I, Charles W. Needham do solemnly swear that I am the President of the defendant "The George Washington University" formerly named the "Columbian University" that I have read the foregoing answer subscribed by said defendant and know the contents thereof; that the facts therein stated upon personal knowledge are true and those stated upon information and belief I believe to be true.

CHAS. W. NEEDHAM.

Subscribed and sworn to before me this 13th day of April, 1905.
[SEAL.] ALFRED B. BRIGGS,
*Notary Public.*

21 *Separate Answer of Johns Hopkins University.*

Filed Apr. 21, 1905.

In the Supreme Court of the District of Columbia.

No. 24,288. Equity.

BROOKE P. TAYLOR et al.
vs.
THE COLUMBIAN UNIVERSITY et al.

This defendant for answer unto said bill or unto so much thereof as it is advised it is material and proper for it to make answer unto, states and avers as follows:

1. It has no knowledge or information in respect of the plaintiffs, their respective places of residence, citizenship or whether they are severally of age or not, and can neither admit nor deny the same, and so far as the same may be material it requires proof.

2. It admits that its co-defendant, the Columbian University is a body corporate under the laws of the United States, having its habitat in the City of Washington, D. C.

3. It admits that it is a body corporate under the laws of the

State of Maryland, having its habitat in the City of Baltimore in said State.

4. It admits that Levin M. Powell, an Admiral on the retired list of the United States Navy, died testate in January 1885, seized and possessed of said parcel of land designated as premises No. 1707 I Street in the City of Washington, District of Columbia, particularly described in this paragraph of the bill. Whether he acquired this parcel of land by purchase or not it does not know and
22 is unable to say.

5th. It has no knowledge, information or belief as to who were the heirs at law of said Admiral Powell at the time of his death; can neither admit nor deny the same: and so far as the same may be material, requires strict proof thereof.

6th. It has no knowledge, information or belief in respect of the death and heirship of the several persons alleged in this paragraph of the Bill: can neither admit nor deny the same; and so far as the same may be material requires strict proof thereof.

7th. It admits that said Powell, in and by the 5th paragraph of his last will and testament duly admitted to probate in the special term of this Honorable Court, devised said parcel of land, No. 1707 I Street, to the Columbian University and in default of the execution by it of the trusts of said devise, then to this defendant; and it presumes that said devise is properly set forth in this paragraph of the Bill, but for greater certainty it prefers that reference should be had to the original will.

8th. It admits that said Columbian University, as devisee thereof, acquired possession of said parcel of land some years ago and has continued in possession thereof ever since and has rented the same to various tenants during that time.

9th. It admits that said Columbian University has advertised said Powell scholarships in its annual catalogue as stated in this paragraph of the bill: but upon information it denies that
23 it has been wholly unable to execute said trust.

10th. It denies that said devise, by reason of indefiniteness or uncertainty or otherwise, is now and ever will be impossible of execution by either of the defendants.

11th. Upon advice of counsel, it avers that said devise of said parcel of land is a lawful and valid devise. It avers that it is able, ready and willing to accept said property under said devise and to carry out the trusts thereof and the intention of said testator as expressed therein, at any time, when for any reason it may be entitled or called upon to do so.

12th. It denies that it is without authority to carry said trust into execution.

13th. Further answering said bill, it is advised that it is unnecessary and not material for it to answer other paragraphs of said bill not herein answered.

14th. It is advised and so charges and avers that this Court is without jurisdiction to maintain said bill, as complainants have, as appears on the face of said bill, a plain, adequate and complete remedy at law by an action of ejectment.

And having answered said bill it prays to be hence dismissed with costs.

THE JOHNS HOPKINS UNIVERSITY.
[SEAL.] By R. BRENT KEYSER.
*President of the Board of Trustees.*

Witness:
CHAS. J. MEYER.

WM. F. MATTINGLY,
*Sol. for D'f't.*

24 STATE OF MARYLAND,
*Baltimore City, To wit:*

I, R. Brent Keyser do swear that I am and for two years past have been the President of this defendant, the Johns Hopkins University: that I have read the foregoing Answer subscribed by said defendant and know the contents thereof: that the facts therein stated as of personal knowledge are true and those stated upon information and belief I believe to be true.

R. BRENT KEYSER.

Subscribed and sworn to before me this 20th day of April, A. D. 1905.

[SEAL.] WILLIAM J. ROTH,
*Notary Public.*

25 *Depositions on Behalf of Complainant.*

Filed April 18, 1907.

In the Supreme Court of the District of Columbia.

No. 24288. In Equity.

BROOKE P. TAYLOR
vs.
THE COLUMBIAN UNIVERSITY et al.

WASHINGTON, D. C., *November* 15, 1905.—11 o'clock a. m.

Met pursuant to notice at the office of H. E. Davis, Jenifer Building, Washington, D. C.

Present on behalf of the complainants, Mr. Norton.

Present on behalf of the defendants, Mr. Clephane.

Whereupon REBECCA C. POWELL, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined

By Mr. NORTON:

Q. Please state your name and residence? A. Rebecca C. Powell. I reside at Alexandria, Virginia.

Q. Were you acquainted with the late Admiral Levin M. Powell? A. I was.

Q. Will you state whether or not you had knowledge of
26 the pedigree of the family of Admiral Powell? A. I have.

Q. Tell us how you acquired this information. A. My father was Admiral Powell's first cousin. My great grandfather was his grandfather, and my grandfather was his father's brother. I have known all about the family from my grandfather and father. I was closely associated with my father for a great many years and in that way have a more thorough knowledge of the family relations than most other persons would have.

Q. Have you seen the printed record in this case that went to the Court of Appeals for the District of Columbia? A. Yes; I have a copy of that.

Mr. CLEPHANE: I object to the witness being handed a printed copy of the record in this case, as not being a proper way to examine her as to pedigree and relationship.

Q. Do you know whether Admiral Powell left any children or direct descendants. A. He did not.

Q. Did he leave any brothers or sisters of the whole or half blood? A. None.

Q. Or any descendants of any such brother or sister? A. None. That branch of the family is extinct.

(At this point the printed copy of the record is withdrawn from the witness.)

27 Q. Did he leave any father? A. No.

Q. Did he leave any mother? A. No.

Q. Or grandfather? A. No.

Q. Did he leave any descendants of his grandfather? A. Yes.

Q. Please state who those descendants of the grandfather are and place them by branches from the proper heads. A. His grandfather, Col. Levin Powell had five sons and one daughter. His sons were William Harrison Powell, Burr Powell, Levin Powell, Cuthbert Powell, Alfred Harrison Powell. His daughter was Sarah Powell, who married William Chilton. The record of the birth of these children is in the family bible which still exists. Those children lived and married and left descendants.

Q. What was the name of Admiral Powell's father? A. Alfred Harrison Powell.

Q. Was his grandfather married more than once? A. You mean Col. Levin Powell.

Q. Yes. A. He was only married once.

Q. You have given me now all of the children of Admiral Powell's grandfather? A. All of the children of Admiral Powell's grandfather who grew up. There were others who died in infancy.

28 Q. I understand that you have given me the names of all the children of Admiral Powell's grandfather who left any descendants? A. Certainly.

Q. Please take these different children of Admiral Powell's grandfather taking up each separately and trace out the descent to the present day. A. William Harrison Powell, the eldest son, married

Miss Green of Maryland. He was drowned in the Shenandoah River. He left children. William, Burr, Green and Levin.

I will have to refer to the notes for William Powell's daughters for I have forgotten their names. There were none who left any children, but William, Burr, Green and Emily, who married Hereford. The names of all who left any children or heirs were Thomas, William, Burr and Green. Emily's child has disappeared. The others do not seem to know anything about him.

Burr Powell married Miss Brooke and left sons: Humphrey, William, Levin, George, Cuthbert, and Frank Whiting.

The daughters were Nancy, who married Noland, Sally, who married Burr Harrison, a cousin Betty Whiting who married Robert Y. Conrad.

I think I have left out one son who left no heirs. Is it worth while to put him down? His name is Edward Burr. The way I happened to omit him is that his branch is extinct. He left no heirs. He was a son of Burr Powell.

Those are all the children of Burr Powell.

The next is Levin Powell.

Q. I would suggest that you give the names of all of them
29 and then state who died without heirs. A. Levin Powell, the son of Col. Levin Powell, married Miss Orr. Had children, William, Alexander, John, Levin, and Cuthbert.

Cuthbert died without children and left no heirs.

Those are all of Levin Powell's children.

Cuthbert Powell, the fourth son of Col. Levin Powell, married Miss Simms. His children were Llewellyn Powell, Charles Levin Powell, Cuthbert Harrison Powell, John Simms Powell and Levin Powell.

His daughters were Ann M. Powell, who married William L. Powell, a son of Burr Powell, her first cousin; Mary Powell, who married George Adee; Ellen Edwards Powell, who married William H. Gray; Jane Powell, who married Dr. Frank Grady, and married the second time George Norris; Francis A. Powell who married Wellington Gordon. She is now living. The other daughters are all dead. Several of them were living at the time of Admiral Powell's death; but they are all now dead except Mrs. Gordon. She is the only living grandchild of Col. Levin Powell.

The next is Alfred H. Powell, son of Col. Levin Powell, who married Miss Thurston and had a son, Levin M. Powell. He married the second time a Miss Tidball and had a daughter by his second marriage, Sarah Jane Powell, who married Dr. Dave Conrad and died without children. He married the third time Miss Kean and had one son, Alfred H. Powell, who died without children. He married the fourth time Miss Harrison, who survived him. There were no children by the fourth marriage.

30 The only daughter of Col. Levin Powell was Sarah Harrison Powell, who married William Chilton.

They had seven children. The children were: William Chilton, John Chilton, Gen. Robert Chilton, Elizabeth Chilton, who married Atkinson, Mary Chilton, who married the Rev. William Lee, Ellen

Chilton, who married Dr. Adolphus Smith and Phœbe Chilton, who married Mr. Henry Day.

They all left heirs.

These are all of Col. Levin Powell's sons and daughters and all his grandchildren.

Q. Now please take up each of the grandchildren, following them in the same groups. A. I will start with William.

Q. I understand you do not know very much about William Powell's family? A. I do not know so much personally; but through correspondence with some of his descendants, I know that there were six children.

Mr. CLEPHANE: I object to the witness testifying to anything she has learned through correspondence with the family, upon the ground that the information is hearsay, and does not come within any of the recognized exceptions to the rule permitting testimony of this kind in cases of family history.

A. William Powell's family went West and were cut off from the rest of the family. Until some years ago one of his great grandchildren wrote to me and I learned something about his
31 family. Before that I had not known anything except what my father told me. I have a list of the children of William Harrison Powell, written by my father years ago.

Q. What was the list of his children written in or on? A. Just a note given to me as genealogical information with regard to his family. After he went west the family had lost sight of him. I think he simply gave these notes to me as a memorandum for the family record. It was given to me years ago by my father.

By Mr. CLEPHANE:

Q. Does that memorandum simply mention the names of the children of William Harrison Powell, the eldest son of Col. Levin Powell? A. Yes.

Q. And did not mention the names of his grandchildren? A. No; only the names of his children. It is only through correspondence with the descendants of these children that I know about the branch of William Harrison Powell's sons.

By Mr. NORTON:

Q. You may state then what you know of them through this correspondence.

Mr. CLEPHANE: I repeat my objection.

A. From that correspondence I know that Thomas Green Powell had a son John Powell, who left no heirs. His son Alexander M. Powell left four heirs, Magnus Troyl, who left seven heirs; Burr Edward, who left as his heir a son, Thomas; William, who
32 left as his heir a daughter, Sarah, who married Dixon and left heirs, Maria who married Ray and left heirs, Margaret, who married Connor and left heirs, and Mary Catherine Davison, who is now living and whose son has given me the information in regard to them.

Then Burr Green, son of William Harrison Powell has also heirs, William Harrison, Henry, Edward, and Marion, the children of Kate. Kate died and left children.

Emily, who married Hereford left one son of whom nothing is known.

That is all I know of the William Harrison branch of the family. The rest I know about personally.

By Mr. CLEPHANE:

Q. I believe you said a little while ago that Levin, the son of William Harrison, left no heirs. A. He left no heirs. He died unmarried, I think. As far as I can learn these are the only ones that have left heirs.

I have given you the children of Burr Powell. Next come the grandchildren of Burr Powell, and I will start with Humphrey Brooke son of Burr and grand-son of Col. Levin Powell, and I am going to give you his children.

Humphrey Brooke Powell, son of Burr Powell had sons Levin Powell, John Henry Powell, Dr. Hunter Powell, Captain Pendleton Powell, Raleigh T. Powell.

He left daughters, Gertrude who married Colston, Laura who married John Randolph Tucker, Louisa, who married William Holliday, Sally, who married Jacquelin Harrison, Kate, who
33 married Dr. Magruder, Marietta, who married first Mr. Richard Holliday, and second, Senator Charles Gibson, Millicent, who married Clemont McPhail, and Lizzie, who died unmarried.

These are the children of Humphrey Powell, the Grandchildren of Burr Powell, and the great grand children of Col. Levin Powell. Of these a great many are dead. Of those who are dead, most of them have left heirs.

I can, if you desire it, give you the heirs of those who are dead.

By consent of counsel it is stipulated and agreed that the witness shall file a statement of the pedigree to have the same effect as if she testified at length to the same, subject to the right to cross-examine thereon, as if she had testified at length, and subject to objection to any testimony shown on that tree which appears on cross examination to be objectionable under the proper rules of evidence.

The above mentioned statement is filed herewith and is marked "Exhibit B. C. P. No. 1."

Cross-examination.

By Mr. CLEPHANE:

Q. You are one of the complainants in this case, I believe? A. Yes.

Q. You are the daughter of Mr. Charles Levin Powell? A. Yes.

Q. What relation are you to Col. Levin Powell, the grand-
34 father of Admiral Powell? A. A great Grand-daughter.

Q. So that your father, Charles Levin Powell was a grandson of Col. Levin Powell? A. Yes.

Q. And who was your father's father? A. Cutherbert Powell, the fourth son of Col. Levin Powell.

Q. How did you obtain your knowledge of your grandfather's marriage. I refer now to the marriage of Col. Levin Powell. A. By the record in his family bible.

Q. Is that in existence? A. Yes sir it is in existence. I made a copy of that several years ago.

Mr. CLEPHANE: I object to any of the testimony of this witness which may have been based upon any records contained in that bible, for the reason that the family bible is the best evidence and should be produced.

Q. That is the only knowledge you have upon the subject of his marriage, I assume. A. No; I have my father's testimony that his grandfather did marry Sarah Harrison, the daughter of Cuthbert Harrison, and I have seen a letter signed Sarah Harrison Powell. I have seen letters from Col. Powell to his wife.

Q. From whom did you obtain knowledge as to the sons and daughters of Col. Levin Powell? A. From my father.

Q. You did not obtain that from the family records of
35 Col. Levin Powell? A. No, of course, I know it from the records because it is in the records; but I also know it from my father. I have known it as long as I can remember.

Q. The names of the sons and daughters of Col. Levin Powell do appear in this family bible of which you speak? A. Yes; all of them with the dates of birth.

Q. Coming to the eldest son of Col. Levin Powell, William Harrison Powell, you say he married Miss Green, of Maryland? A. Yes.

Q. From what source of information did you obtain that knowledge? A. From my father. He told me of it.

Q. William Harrison Powell, you say, was drowned in the Shenandoah River? A. Yes.

Q. Do you know whether or not William Harrison Powell ever left a will? A. I do not.

Q. Did you ever make any examination to ascertain that? A. No.

Q. When did Col. Levin Powell die? A. In 1810.

Q. When did William Harrison Powell, his eldest son, die? A. I don't know the exact date. It was before his father's death.

Q. Prior to 1810? A. Prior to 1810; between 1800 and
36 1810. I am not quite certain.

Q. When did Burr Powell, who married Miss Katherine Brooke die? A. I don't know.

Q. Have you any idea about the time? A. I cannot remember him at all. I cannot say. It was some time after his father's death, but I don't know when. I heard he was born in '76 but I don't know when he died. Any of his descendents could tell, but I don't know.

Q. You know that some of his descendents could tell that? A. Yes; he has plenty of descendents who could tell.

Q. When did Cuthbert, the son of Colonel Levin Powell, die? A. He died in 1847, in May. It was either May or April. I forget which.

Q. When did Levin, the son of Colonel Levin Powell, die? A.

I think it was 1837. The date is in the family bible but I have forgotten exactly. I think that was it.

Mr. CLEPHANE: In order to avoid a repetition of this objection, I desire to object to any and all testimony given by this witness derived from information contained in the family bible, on the ground that it is not the best evidence.

Q. When did Mrs. Sarah Chilton, the daughter of Colonel Levin die? A. I don't know.

Q. Now, you say that the father of Admiral Powell was
37 Alfred Harrison Powell? A. Yes.

Q. Do you know when he died? A. No, sir; I cannot give the date.

Q. Have you any idea about when it was? A. It was in eighteen hundred and thirty something, but I don't know the date.

Q. His last wife, Miss Harrison survived him? A. Yes.

Q. Is she still living. A. No.

Q. Do you know when she died? A. No.

Q. Did she die prior to 1885? A. Oh, yes.

Q. You have also stated that Col. Levin Powell had several other children who died in infancy? A. Yes.

Q. How do you know that? A. I know it by the records in the family bible, except as to one of them, his youngest son, Harrison Powell, whom I have heard spoken of as having died as a youth Except him I never heard of them except in that record.

Q. Aside, then, from the information which you have derived from the family bible, you know nothing whatever about these other children of Colonel Levin Powell? A. No, sir; I know nothing of the children who died in infancy, the infant children of Colonel Levin Powell, except from the record in the family bible.

38 Mr. CLEPHANE: Now, I desire to say on the record that I shall have to insist upon the production of this family bible in order to properly cross-examine this witness, and until this bible is produced, I cannot conclude my cross-examination.

The WITNESS: I don't know where it is even now.

Mr. CLEPHANE: I am willing that the bible should be retained in the possession of the family, and not filed in court, provided it can be produced in court at the hearing of the case.

By Judge NORTON:

Q. Do you know where this family bible is now? A. I know it is in the possession of one of the children of Mr. John Henry Powell of Richmond. I don't know which one of them has it, but it is in the possession of one of them. I imagine Mrs. Brockenbrough has it but I don't know exactly. It was in the possession of John Henry Powell of Richmond when I saw it. He is dead since, and one of his children has the family bible but I don't know which. I made a copy of the leaf when I saw it.

Q. Do you know the name of the child of John Henry Powell that has this bible now? A. I think it is Mrs. Bettie Brockenbrough, but I am not sure.

Q. Is the knowledge that you have of the present living heirs of Admiral Powell derived from that bible? A. Not at all.

Q. From what is your knowledge derived as to the present
39 living heirs of Admiral Powell? Please state generally what your knowledge is founded on? A. From personal intercourse and personal acquaintance with the grand children and great grand-children of Colonel Levin Powell. I suppose there is hardly one of them that I haven't met and known, or very few.

Q. Can you state of your own knowledge whether they are generally received in the family as bearing the relationship thereto that you set out in the paper that has been filed? A. Yes; they are universally received in the family.

Mr. CLEPHANE: I object to counsel interrupting my cross-examination of the witness for the purpose of putting to her a series of questions upon this or any other point.

Judge NORTON: Counsel misunderstood the position of Mr. Clephane. He understood that he was not going on with the cross-examination unless he had the family bible.

By Mr. CLEPHANE:

Q. Then, as I understand you, Miss Powell, there are two sources of information, from which you have derived your knowledge of the family genealogy, one from the family bible to which you have referred; that is correct? A. Well, I don't know. I think I knew just as much before I saw the family bible as I do now, except in so far as those infant children are concerned. They are the only ones I did not know before I ever saw the family bible.

Q. You know nothing at all about the children of Colonel Levin Powell with the exception of William, Harrison, Burr, Cuth-
40 bert, Levin, Sarah Chilton and Alfred Harrison, aside from the information you received from the family bible. A. And Harrison. I had heard Harrison mentioned even before.

Q. Is Harrison the same as Alfred Harrison? A. No; Harrison was the youngest son, who died as a boy. I had heard him mentioned before. The other infant children I never had heard of except from the record in the family bible; but Harrison I did know of before.

Q. And the other information relating to the various branches of the family, aside from your own family, you have received from the other members of the family, in question. A. I have known personally the descendants of Colonel Levin Powell, except the infant children.

Q. How have you gained that personal knowledge? A. By family intercourse.

Q. That is what you say, from information from other members of the family? A. No, from seeing them and talking to them.

Q. Have you known all of those various persons whose names you have given in this list? A. Very nearly all. I knew Cousin Humphrey, cousin Cuthbert, and I knew the descendents of Burr Powell. I did not know Major Burr Powell. He is the son of Burr Powell. I knew personally his sons, Humphrey, Cuthbert, Francis Whiting, and his daughters, Sallie and Bettie. Nancy Noland I never saw.

Q. And from them you derived information as to their
41 particular branches of the family, did you not? A. I derived that from my father more than from—I derived from them knowledge of themselves, each one, but my knowledge of the branches of the family I suppose I derived from intercourse with them.

Q. You have had a great deal of correspondence, as I understand you? A. Not with those. Those were all there. I knew those by personal knowledge and personal individual intercourse.

Q. You have had a great deal of correspondence, as I understand you, with different members of your family, have you not? A. No, I cannot say that exactly.

Q. Have you ever corresponded with any of the members of the family, or with any of the descendents of Colonel Levin Powell, in order to obtain any portion of the information which is contained in the list which you have filed and which is marked Exhibit R. C. P. No. 1? A. I cannot say I have. I have corresponded with them, but I have information because I knew of the list before. I did not need any information. No, I cannot say I have at all except the William Powell line. There may have been a few names of the very younger members I did not know, but the older members I knew them all personally.

Q. From whom did you derive the information in regard to the names of those younger members of the family? A. Indeed I cannot tell, there have been so very few of them that I had to get any of. I believe I did not know the names of all the Dudleys; but there are so very few that I did not get any information from
42 anybody specially. I cannot say that I got any information from correspondence regarding those.

Q. In what way did you get the information? By talking with them? A. I suppose so. I have known them always. I have always kept in touch with the branches and have known who they were—who the children were. I have known the parents and known of the children as they were born.

Q. Precisely; that is just what I thought. As those children were born you were notified by their parents of their births; were you not? A. No; not by the parents generally. I just heard it spoken of in the family.

Q. So, you did not even know from the parents themselves about the births of these children; is that correct?

Judge NORTON: Question objected to, as what children are referred to are not specified.

A. I cannot tell. If you ask me any special ones I could tell. I have known simply that there were these members of the family.

Q. Is Humphrey B. Powell dead? A. Humphrey Brooke Powell?

Q. Yes. A. Yes.

Q. How did you know who his children were? A. By personal acquaintance.

Q. With the children? A. With the children.

43 Q. And you knew each and every one, did you? A. Each and every one, yes.

Q. And did you know each and every one of all their children? A. I did not know each and every one—yes, I did. I suppose I did.

Q. Each and every one of all of their children? A. Each and every one of all—I don't know Edward B. Powell, cousin Frank's son. I know all the other boys. I did not know him.

Q. How did you find out about Edward B. Powell? A. I heard his brother's family speak of him, besides hearing of him in different ways at different times. I know he is the only surviving son of Francis Whiting Dudley.

Q. And these members of the family that you have heard speak of him are alive, many of them, are they not? A. Yes.

Mr. CLEPHANE: Then I object to all testimony derived from knowledge of that kind, as incompetent under the rules.

A. (Continued:) But almost everyone I know personally. I have a personal acquaintance with them. There are a few of them that I have never met. The larger number I know personally.

Q. Now, coming down to Admiral Powell, the person who made this will which is now in controversy, you say he had one brother and one sister? A. One brother and one sister.

Q. And Admiral Powell was what relation to you? A.
44 My father's first cousin; my first cousin once removed.

Q. Did you personally know Admiral Powell's brother and sister? A. I knew his sister very well; not his brother.

Q. That was Mrs. Sarah J. Conrad? A. Yes; Mrs. Sarah J. Conrad.

Q. She died when? A. During the war; about 1863, I think.

Q. You did not know Alfred H. Powell? A. I did not.

Q. And from whom did you derive knowledge that there was an Alfred H. Powell? A. From my father, and from his sister, Mrs. Conrad.

Q. When did Alfred H. Powell die? A. I think before the war. He died as a young man in the west some where.

Q. Do you know as a matter of fact that he is dead? A. I know that his sister and brother thought so. What their belief was based on I cannot say. I suppose it was personal information. I know that he was said to be dead by those in the family.

Q. They never heard of the time, nor place, nor circumstances under which he died? A. Oh, yes, they did. I know that. He died stricken with paralysis suddenly. He died of apoplexy. He was sitting with his wife when he died of apoplexy. It was spoken of as rather a singular case.

Q. Taking the children of William Harrison, the eldest son of Colonel Levin, who was the eldest son of William Harri-
45 son? A. Thomas William, I think. Indeed I know he was.

Q. You say Thomas William had nine children? A. It seems so.

Q. Do you know whether Thomas William had other children who died in infancy besides the nine that you mentioned? A. I do not.

Q. You have never heard one way or the other about that? A. No.

Q. So that he may have had other children who died in infancy of whom you never heard? A. It is possible.

Q. And there may be other children of whom you never heard who did not die in infancy? A. I suppose so. The list was sent me by one of his descendents, so I supposed that that was all, but I don't know of my own personal knowledge.

Q. I believe you have already stated that you do not know of your own personal knowledge very much about the family of William Harrison? A. Not beyond the fact, which my father who, knew them told me, that William Harrison's sons and his children moved to Kentucky at his death.

Q. So, your father's knowledge was limited to the sons of William Harrison? A. To the sons of William Harrison.

Q. And beyond that you know nothing except by correspondence with other members of William Harrison's family? A. His
46 family, yes; that is the only source.

Q. You say that Levin died unmarried, that is, the son of William Harrison? A. Yes.

Q. The only information you have about that is derived in the same way, by correspondence? A. My father gave me that. He died, I think, before they went west.

Q. Now your father told you that there was a daughter of William Harrison, named Emily, who married Mr. Hereford? A. Yes.

Q. And your father did not know anything about their child? A. No, I think not.

Q. The only knowledge you had about their children was what you derived through correspondence with these members of William Harrison Powell's family? A. I suppose so. I am not positive about that. I only know they said they knew nothing. They said there was one son, but did not know anything about it.

Q. You don't know whether that son has disappeared, or not? A. I can find no trace of him.

Q. And you don't know whether he married? A. No, I know nothing about that.

Q. Or whether he had any children? A. No.

Q. Coming now to Burr Powell, the second son—— A. Burr Green?

Q. Burr Green Powell, the second son of Colonel Levin
47 Powell; his eldest son was Edward B. Powell? A. I don't understand exactly. Whom are you asking about?

Q. I am asking you about Burr, who was the son of Colonel Levin. A. Oh, he is not Green. I thought you meant Burr Green. It is Burr, the son of Colonel Levin.

Q. Now, Humphrey was his oldest son? A. Yes.

Q. When did Humphrey die? A. I don't know.

Q. Was it prior or subsequent to 1885? A. It was long before that. It was before the war.

Q. When did William L. die? A. In the eighteen fifties. It was about 1853 I think; 1852 or '3.

Q. When did George Cuthbert die? A. I cannot tell that exactly. It was before the war, I think.

Q. When did Frank W. die? A. He died about 1880, I think. Probably it was in the seventies. It was after the war, but not very long.

Q. It was not as late as 1885? A. No. They were all dead before that.

Q. When did Mrs. Nancy Noland die? A. It is so long ago I don't know. I don't remember anything about her at all.

Q. Do you know whether it was before or after 1885?

48 A. Oh, long before.

Q. When did Miss Sallie Burr Harrison die? A. Long before 1860.

Q. When did Miss Bettie Whiting, who married Mr. Conrad, die? A. I think she died about 1864 or '5. I am not certain that that is the time exactly, but I think it was then.

Q. And then the youngest son was Edward B, was he? A. He came between. I never knew anything about him. He must have died very young.

Q. How did you obtain your information about him? A. I don't know. Somebody must have told me. I don't know where I got the name of Edward D. because I have no personal knowledge of him. He must have died young. I never knew of him.

Q. You know he left heirs? A. I know he did not. I know he was never married.

Q. I beg your pardon. A. No, he was not represented in the family at all. I did not really know that there was an Edward Burr for a long time. Some one of the family must have told me that, because I don't know where I got the information.

Q. Coming now to the children of Levin Powell, the son of Colonel Levin Powell: he married Miss Orr? A. He married Miss Orr.

Q. Is Miss Orr now living? A. No.

Q. And he had four children? A. Three.

49 Q. His eldest child is William Alexander Powell? A. William Alexander Powell.

Q. He died when? A. Somewhere in the seventies; about 1871, I think.

Q. John Levin died when? I am referring now to the grand-son of Colonel Levin. A. I knew John Levin. I think he died during the war; I think in 1860.

Q. And Cuthbert, his brother, died when? A. He died long before. He died about 1831.

Q. Now, coming to the children of Cuthbert, the son of Colonel Levin; he married Miss Simms, I believe? A. He married Miss Catherine Simms.

Q. And she is dead now? A. She is dead.

Q. He had a number of children of whom the eldest was Llewellyn? A. Dr. Llewellyn Powell.

Q. He died when? A. In 1864.

Q. Charles Levin died when? A. In 1896.

Q. Do you know whether Charles Levin left a will? A. Yes.

Q. He did leave a will? A. Yes.

Q. Cuthbert Harrison died when? A. Cuthbert Harrison died in 1897, I think it was—1897 or 1898.

50 Q. Did he leave a will? A. No, he left no will.

Q. Did you ever make an examination to ascertain? A. I looked through the wills to see. There was no will recorded. He never made any will. I know he did not.

Q. John Simms died when? A. John Simms died in 1896 or 1897.

Q. Did he leave a will? A. I don't know. He left children.

Q. Did you ever make an examination to ascertain? A. No. He left children. I don't think he left a will.

Q. But you don't know? That is simply your opinion? A. I don't know.

Mr. CLEPHANE: The opinion of the witness is objected to.

Q. Then you spoke of a brother of John Simms named Levin? A. Yes.

Q. Was not his name John Levin? A. Oh, no. John Levin was the son of Levin. The son of Cuthbert was merely Levin.

Q. And Levin died when? A. He died in 1895.

Q. Did he leave a will? A. Yes.

Q. Ann M. married whom? A. He married Miss Kercheval.

Q. Is she still living? A. I don't know.

51 Q. She may be either living or dead for all you know? A. I don't know anything about her.

Q. You don't know whether she had any children or not? A. I know she hadn't any.

Q. How do you know she hadn't any? A. Well, because she was separated from her husband for a good while, and I knew her at the time of the separation, and I know there were no children.

Q. Is her husband dead? A. Oh, yes.

Q. You don't know whether she has married again or not, do you? A. I do not.

Q. Now, Mary who married the Rev. George Adie. Is she living? A. No.

Q. When did she die? A. She died in 1895, I think.

Q. Did she leave a will? A. I can safely say, no, but I don't know personally.

Q. You never investigated to find out? A. No. She left children.

Q. Is her husband living? A. No. He died long before her.

Q. Now, coming to Ellen, the next child, who married William H. Gray. Is she dead? A. She is dead.

Q. When did she die? A. In 1863.

52 Q. Is her husband living? A. No He is dead.

Q. Jane, who married Dr. Frank Grady; is she living? A. She is dead.

Q. When did she die? A. She died in 1900.

Q. Did she leave a will, do you know? A. No.

Q. How do you know that? A. Well, I don't know. I know she did not, but I don't know I know it.

Q. That is, you feel certain that that is the case without any actual facts upon which to base that knowledge? A. No. She left no property to will. She left children to heir what she had.

Q. She married twice? A. Yes.

Q. And the second time she married George Norris? A. Yes, she was Mr. Norris' widow when she died.

Q. And he is dead? A. Yes.

Q. Francis A., her sister, married Mr. Wellington Gordon. A. Yes.

Q. I believe you stated she is now living? A. Yes, she is now living.

Q. Now I will ask you about the children of Sarah Chilton, the daughter of Colonel Levin Powell. The eldest child was William Chilton? A. Yes.

53 Q. Is he living? A. No, he is dead.

Q. He died when? A. Before 1860. I don't know.

Q. John C. Chilton: Is he living? A. No, he is dead.

Q. When did he die? A. I don't know when he died only I know it was before 1885. It was some time ago. It was long ago. I don't know the date.

Q. Is Robert T. Chilton living? A. No, sir.

Q. When did he die? A. I don't know the date of his death exactly, but it was before 1885.

Q. When did Mrs. Elizabeth Atkinson die? A. She died a long time ago. I don't know the date of her death but I think she died before 1860.

Q. Before 1860? A. Yes, before the war.

Q. Mrs. Mary Lee died when? A. Mrs. Mary Lee I think died about 1880, but I cannot tell the exact date. I had thought it was doubtful whether she was living at the time of the Admiral's death, but I inquired of one of her grand-children and I was told she died before; before 1885.

Mr. CLEPHANE: That evidence is objected to as being hearsay.

A. (continued). Well, from one of her grand-children, I thought they could give personal knowledge.

54 Q. Ellen Smith died when? A. Ellen Smith died in 1897, I think, as well as I can tell.

Q. Do you know whether she left a will? A. I don't know.

Q. Phoebe Day; is she living? A. No; she died long ago. She died before 1860.

Q. I think I have taken all the grand children of Colonel Levin. A. I think so. That is the last one, I believe.

Q. I won't ask you anything Miss Powell, about the grand-children of William Harrison Powell, because I believe you have already stated that you know nothing of them except what you learned through correspondence? A. I do not. I never met any of his grand-children.

Judge NORTON: I object to the question as the witness has already

stated that she received certain information from her father with reference to the children of William Harrison Powell?

The WITNESS: Yes, I did.

Q. But you received no information from him with reference to the grand-children? A. No; not with reference to the grand children of William Harrison.

Q. I will ask you now, Miss Powell, about the children of Humphrey B. Powell, the son of Burr Powell, and the grand son of colonel Levin Powell. The first child of Humphrey B. Powell, was Levin Powell, was it not? A. The eldest son? I am not sure he was the eldest child. He was the first son. A sister may have been older.

55 Q. He was the eldest son? A. He was the eldest son.

Q. He is now dead? A. He is dead.

Q. And he died when? A. About six or eight years ago. I don't know exactly.

Q. Do you know whether or not he left a will? A. I do not.

Q. He died leaving one son? A. One son.

Q. And only one? A. Only one.

Q. Is that one son living? A. He is Dr. Levin Powell of Cleveland, Ohio.

Q. He is now living? A. Yes.

Q. Referring now to John Henry, the second son of Humphrey B: he is now dead? A. He is dead.

Q. He died when? A. I don't know at all.

Q. Do you know whether or not he left a will? A. I don't know anything about it.

Q. How did you find out he is dead? A. Simply from general report. I think his family believed him dead for a good while. John Henry went away from home and went out to the far west and never returned home again. He went away fifty years ago, I suppose or something like that: I don't know—forty years ago.

56 Q. So you never heard of the actual fact of his death? A. No, I think not. I never did. I don't know whether his family ever heard of the actual fact of his death or not, but his death has been assumed for forty years.

Q. Then you don't know as a matter of fact whether he ever married or left any children? A. I don't know anything about it.

Q. Dr. Hunter Powell of Cleveland, Ohio, is the third son of Humphrey B? A. Yes.

Q. And he is now living? A. He is now living.

Q. Captain P. P. Powell is the fourth son of Humphrey B? A. Yes.

Q. And he is dead? A. He is dead.

Q. Where did he die? A. He died this last spring.

Q. Do you know whether or not he left a will? A. I don't know.

Q. Do you know whether or not he left any heirs? A. He left no children. He left a widow.

Q. How do you know that? A. Well, I had a letter from his brother Hunter telling me of his death and speaking of his wife.

Q. Is his brother living? A. He is the one just above, Dr. Hunter.

57 Mr. CLEPHANE: I object to the testimony relating to the death of Captain P. P. Powell and the number of heirs he left or did not leave, on the ground that there is better evidence than that from this witness.

Q. The fifth son of Humphrey B. Powell was Raleigh T. Powell? A. Yes.

Q. Is he dead? A. He is dead.

Q. How do you know that? A. I heard it at the time of his death. I only knew it from the family at the time of his death.

Q. When did he die? A. I think he died about 1860, but I don't know exactly. I cannot tell exactly when Raleigh died. He was only a boy.

Q. You only know about his heirs from what his family told you? A. He was only a boy. I don't think he was over twelve or thirteen years old. I don't know exactly; I have forgotten. He was only about that old when I saw him, and he died soon afterwards.

Q. A daughter of Humphrey B. Powell was Gertrude M. Colston? A. Yes.

Q. She is dead? A. She is dead.

Q. How did you ascertain that fact? A. Well, I saw the notice in the paper of her death, and I heard of it through the members of her family.

58 Q. When did you see that notice? A. I don't know about ten or fifteen years ago; ten years ago, I suppose.

Q. And that is all you know about it. A. Except that I have heard her death mentioned by other people speaking of her. She was spoken of a good deal at the time of her death.

Mr. CLEPHANE: This testimony is objected to for the same reasons as that last stated above.

A. (continued). I was not present at her funeral. She died in Richmond. I was not there.

Q. You don't know whether she left a will or not, of course? A. No. She left children.

Q. Who were her children. They are enumerated on this paper? A. They are enumerated there.

Q. A Mrs. Gildersleeve. A. Mrs. Bettie Gildersleeve.

Q. Mrs. Annie Camm, Mrs. Janie Howard, Mrs. Laura Howard—— A. Laura's name was not Howard. I cannot remember what Laura's name was. She married in Richmond, and I haven't seen her since her marriage. I have forgotten what her name is.

Q. And Mr. Thomas M. Colston? A. Yes?

Q. All these children of Mrs. Gertrude Colston are now living? A. They are now living.

Q. And you obtained their names from whom? A. From
59 personal intercourse with all of them.

Q. You are acquainted with each one of them? A. I am acquainted with each one of them.

Q. And Laura Powell, who married John Randolph Tucker, is now living? A. She is now living.

Q. Louisa Powell, who married William Holliday, is now living? A. She is now living.

Q. Sallie Powell, who married Jacquelin Harrison, is now dead? A. Yes.

Q. How did you know about her death Miss Powell? A. Well, it has been a good while. I knew it in the same way. I heard members of the family speak of her. I heard members of her own family speak of her as dead.

Q. You don't know when she died? A. I don't know when she died. I have forgotten.

Q. You don't know whether it was before or after 1885? A. Yes; I know it was before that.

Q. And she left one child. A. She left more than one child, but I don't know her children personally and that is the only one whose name I know.

Q. That is Mrs. Julia H. Ford? A. Mrs. Julia H. Ford.

Q. Where did she live? A. I believe I have her address but I cannot give it. It is in West Virginia.

Q. There may be other children? A. There are other
60 children, I am sure, but I don't know their names.

Q. Now another daughter of Humphrey B. Powell was Mrs. Kate Powell Magruder? A. Yes.

Q. She is living? A. Yes.

Q. Is she the wife of Mr. Magruder of Washington? A. No, she lives in Texas.

Q. Another daughter was Marietta Powell Gibson? A. Yes.

Q. She is now living? A. Yes. She lives in New York.

Q. Another daughter is Millicent Powell McPhail? A. Yes.

Q. Another daughter is Lizzie Powell? A. Miss Lizzie. Yes.

Q. She is dead? A. Yes, she died as a child.

Q. And that information you obtained how? A. I think simply by hearsay. I knew the child very well, but I don't remember that I saw her at the time of her death. I knew that she died.

Mr. CLEPHANE: That testimony is objected to on the ground last above stated.

Q. Now, let me ask you about the children of William L. Powell, the son of Major Burr Powell. A. Well, that is over in the Cuthbert Powell line, I think. Is it not given under the head of Annie
M. Powell? He married his cousin Annie M. Powell, and
61 I think his children are given in that line and not in the Burr Powell line.

Q. Edward B. Powell, the son of Major Burr Powell, left no heirs, you say? A. No.

Q. When did he die? A. I don't know. As I told you, he must

have died very young, for I did not know him. I never knew him personally or even heard of him personally.

Q. How do you know he is dead? A. Well, I knew all the other children, and there never was any Edward B. amongst them. His name is merely on some record, I don't know what. Mrs. Laura Tucker will tell you all about him. I know nothing about him.

Mr. CLEPHANE: I object to any testimony from this witness respecting him, for the same reason.

Q. George Cuthbert Powell, the son of Major Burr Powell, is dead, is he? A. He is dead.

Q. How did you learn that, Miss Powell? A. Well, he died before the war, and I heard of it at the time.

Q. Did he leave any children? A. He did.

Q. Do you know their names? A. They were Robert Randolph Powell and Conrad Powell; Ida who married Dulaney, and Kate who married George Carter, and Virginia who married Charles Minnigerode.

Q. Those were all of George Cuthbert Powell's children?

62 A. All of George Cuthbert Powell's children.

Q. Let me ask you then, about those children of George Cuthbert Powell, and their descendants. The first son that you mentioned was Robert Randolph Powell? A. Yes. He married Miss Kearney.

Q. And he died? A. He died.

Q. How did you know that? A. I knew it at the time of his death. I heard of it at the time, and I knew where he died. He died at his sister's, Mrs. Carter's.

Q. Do you remember when that was? A. Since the war, but I cannot tell when. I think it was before 1885, though. I think I am absolutely certain it was before 1885.

Q. You don't know whether or not he left a will? A. I do not.

Q. His children, that is, the children of Robert Randolph Powell, were William G. Powell and Cuthbert Powell? A. Owen is there too.

Q. Yes, four. I did not see that name. William G. Powell, Owen Powell, Cuthbert Powell, Aimee Powell and Lucy Powell. A. Yes.

Q. They are all alive now? A. All living.

Q. Conrad Powell, the son of George Cuthbert, who was the son of Major Burr Powell, is dead? A. He is dead.

63 Q. When did he die? A. It has been a long time ago. I don't know exactly.

Q. What knowledge have you as to whether or not he ever married? A. I know his sister very well. I know through her that he never married.

Q. Ida Powell married whom? A. Ida Powell married Henry Dulaney.

Q. And she is dead? A. She is dead.

Q. When did she die? A. She died about ten years ago, I think.

Q. Do you know whether or not she left a will? A. I do not.

Q. Ida Dulaney left three children? A. Three children.

Q. Rozier Dulaney, Mrs. Marietta Belt and Mrs. Rebecca D. Beverley? A. Yes.

Q. They are all living? A. All living.

Q. And Kate Carter? A. Kate Powell married George Carter.

Q. She was the daughter of George Cuthbert Powell? A. Yes.

Q. And she is dead. A. She is dead.

Q. When did she die? A. About two years ago.

64 Q. Do you know whether or not she left a will? A. I do not.

Q. Her heirs are George Carter, Conrad Carter, Grayce Carter Beach and Mary Custis Carter Patchin? A. Yes.

Q. Those are the only children she ever had? A. Yes, those are all the children.

Q. And they are all living? A. They are all living.

Q. Virginia P. Minnigerode, daughter of G. Cuthbert Powell, is dead? A. She is dead.

Q. She died when? A. She died about 1898.

Q. Did she leave a will, do you know? A. I don't know. I am pretty certain she did not, but I cannot say positively from my own knowledge.

Q. And her children are all living? A. All living.

Q. And they are correctly named in the list which you filed? A. Yes.

Q. The list which has been marked Exhibit R. C. P. No. 1? A. Yes.

Q. Now, I want to go back to Frank Whiting Powell, who was the son of Major Burr Powell. Is he dead? A. Yes.

Q. Do you know when he died? A. I think he died

65 about 1875 or '6, but I am not sure exactly about the date.

Q. He left several children? A. Several children.

Q. His first child was John Henry Powell? A. Yes. He is dead.

Q. When did he die? A. About four or five years ago.

Q. Do you know whether or not he left a will? A. I do not.

Q. He left five children, did he not? A. Yes.

Q. John Powell, Bettie W. Brockenbrough, Rebecca Powell Carter, Carrie P. Williams, and Sarah P. Coleman? A. Yes.

Q. Sarah P. Coleman is now dead? A. Yes.

Q. Do you know whether or not she left a will? A. I do not.

Q. Do you know when she died? A. She died a little more than a year ago. She died last spring a year.

Q. She left several children? A. Yes.

Q. And you don't know their names? A. I don't know their names.

Q. Another son of Major Burr Powell was William C. Powell? A. No, he is the son of Frank Whiting Powell.

Q. I beg your pardon, yes. He is the son of Frank Whit-

66 ing Powell? A. Yes.

Q. Is he living? A. Yes.

Q. And his brother, Edward B. Powell, is living? A. Yes.

Q. And his sister, Mrs. Olivia Powell Patterson is living? A. She is living.

Q. And her sister, Mrs. Harriet Carmichael, is living? A. She is living.

Q. Mrs. Carmichael had a brother, Mr. Lewis Powell, who is dead? A. Yes.

Q. Do you know when Lewis died? A. Lewis died about ten years ago. It has been more than that. It must have been in the latter part of the eighties or early nineties. I don't know exactly.

Q. You don't know whether he left a will or not? A. He left a widow and two children. Their names are there.

Q. Did he leave a will? A. I don't know.

Q. Is his widow still living? A. Yes.

Q. What is her name? A. Mrs. Jennie Powell.

Q. And he left two children? A. Two children, Francis Powell and Mrs. Katherine de Bourgeois.

67 Q. Those two children are living? A. They are the heirs of Lewis Powell.

Q. They are living? A. They are living.

Q. Lewis Powell had a sister, Mrs. Bettie Strotha? A. Yes.

Q. And she is dead? A. And she is dead.

Q. When did she die? A. I don't know exactly. It has been not so very long ago.

Q. Did she leave a will? A. I don't know.

Q. She left children? A. Two daughters.

Q. Do you know what their names are? Mrs. Lizzie Lawson and Mrs. Hallie Early? A. Yes.

Q. They are living? A. They are living.

Q. Miss Powell, let me ask you in regard to the other descendents of Colonel Levin Powell who have not been referred to in this cross-examination. Do you know whether or not any of them who are dead left wills? A. I do not, except some of Cuthbert Powell's heirs. You read there some of Cuthbert Powell's. I don't know about any of them except about Cuthbert Powell's and even there there were only two or three that I knew made wills.

68 Q. Did you see the bill of complaint which has been filed in this case, before it was filed? A. I think not.

Q. So that you did not give to the attorneys for the complainants the information which is contained in that bill? A. I don't know. So far as I know I did not. I don't understand.

Q. Do you know who gave Judge Norton the information which he put in this bill of complaint, as to heirship? A. As to heirship?

Q. Yes. A. I suppose I did as to heirship.

Q. Then you were mistaken? A. In what?

Q. In saying that at the time Admiral Powell died he left as his only heirs at law the persons who are named as the complainants in that bill, were you not? You have found since then the names of a good many other heirs that are not mentioned in this bill at all, have you not? A. I suppose so. I don't know who are mentioned in the bill.

Q. Well, let me ask a specific question. A. Is it the first bill filed with only the descendants of the living cousins?

Q. Well, I really don't know what this is supposed to be, Miss Powell. A. What I gave Judge Norton at first were the names of the cousins of Admiral Powell living at the time of his death and their descendents.

69 Q. Just about that; You mentioned as one of those cousins the name of Levin Powell? A. Yes, son of Cuthbert.

Q. Do you know whom Levin Powell married? A. I told you he married Miss Kercheval.

Q. Didn't he leave some heirs? A. No. He never had any children. He must not be confounded with John Nevin Powell, son of Levin.

Q. Did you ever hear of Mrs. William D. Thomas? A. Of course; I know her very well.

Q. Who is she? A. She is the daughter of John Levin Powell, son of Levin. You will find her under the head of Levin Powell.

Redirect examination.

By Judge NORTON:

Q. You said that Levin Powell left a will. Was that will ever probated? A. No, it was not probated.

Q. Do you know what became of that will? A. I think I lost it. I did not take care of it.

Q. Why didn't you take any care of it? A. Because I thought he had no property and consequently it was not of any value.

Q. In whose favor was that will? A. It was in my favor.

Mr. CLEPHANE: I object. There has not been sufficient foundation laid for the introduction of this testimony.

Q. Have you ever borrowed any money from him during
70 his life? A. Never.

Q. How about him? Did he ever borrow any money? Were there ever any transactions between you? A. Yes. I had furnished him with money for a long while. I paid his board for him.

Q. Charles L. Powell, who left a will, as you testified was your father? A. Yes.

Q. During the time that you were being examined, did you have your notes before you? A. No.

Q. Who had those notes while you were being examined? A. Mr. Clephane. I had no notes. I always knew it through my grand-father, and my father, and personal intercourse with the members of the family, and I systematized it before this time for another purpose, outside of the William Harrison Powell branch.

Q. Can you state of your own knowledge whether all of those named in the paper that you have filed as being descendents, were generally known and recognized as such under the lines as you have set them out, by the balance of the family? A. I know that they are.

Mr. CLEPHANE: Question and answer objected to as not being redirect examination.

Q. Did you know Admiral Powell? A. I did.

Q. Personally. A. Yes.

71 Q. Do you know whether or not he recognized the heads of these families as being his own family. A. I know he did.

REBECCA C. POWELL,
*By the Examiner by Consent.*

Subscribed and sworn to before me this — day of —— A. D., 1905.

—— ——.

Whereupon an adjournment was taken to meet subject to notice.

WASHINGTON, D. C., *Thursday, July* 5, 1906—
2.30 o'clock p. m.

Met pursuant to notice at the office of Henry E. Davis, Esq., Jenifer Building, Washington, D. C.

Present on behalf of the complainants, Mr. Davis and Mr. Norton.

No appearance on behalf of the defendants.

Owing to the absence of counsel for the defendants the further taking of these depositions was thereupon adjourned subject to notice.

72 EXHIBIT R. C. P. No. 1.

William H. Powell.

Thomas:
John D., no heirs,
Alexander M., 4 heirs,
Magnus Troyl, 7 heirs,
Burr, Edward, 9 chil., some dead,
Thomas William, 9 chil., some dead,
Sarah E. Dixson, several heirs,
Maria L. Ray, 6 chil.,
Margaret L. Cannon, 4 heirs living.
Mary Catherine Davidson, living.

Levin:
No heirs.

Burr, Green:
William H.
Henry,
Edward,
Marion,
Kate (dead, 6 child.)

Maria:
No heirs.

Sarah:
No heirs.

73 Emily M. Hereford:
One son.

Col. Levin Powell.
m.
Sarah Harrison.

Children.

William:
Burr
Levin
Cuthbert
Alfred H.
Sarah.

Alfred H. Powell M., 1st, Miss Thurston. Child, Levin Myron Powell, dead, no heirs. M., 2nd, Mrs. Tidballs. One child, Sarah J. Conrad, dead, no heirs. M., 3rd, Miss Kean: one child, Alfred H. Powell, dead, no heirs. M., 4th, Miss Harrison, no children.

Maj. Burr Powell, son of Levin.
m.
Katherine Brooke.

Children.

Humphrey B.
William L.
Edwd. B.
Geo. Cuthbert
Frank W.
Ann B.
Sally H.
74 Betty W.,
All deceased.

Children of Humphrey B. Powell:
Levin Powell (dead) son Dr. L. Powell
John Henry Powell (dead) no heirs.
Dr. Hunter Powell, of Cleveland, Ohio.
Capt. P. P. Powell
Raleigh T. Powell (dead) no heirs.
Gertrude M. Colston (dead)

Heirs:
Mrs. B. Gildersleeve
Mrs. Annie Cannon
Mrs. Janie Howard
Mrs. Laura ——
Thomas M. Colston.

Laura m. J. R. Tucker
Louisa m. Wm. Holliday
Sallie m. Jacquelin Harrison (dead)

Heirs:
Mrs. Julia Ford et al.

Kate Powell Magruder
Marietta Powell Gibson
Millicent Powell McPhail
Lizzie Powell (dead) no heirs.

Children of Wm. L. Powell, son of Burr, recorded further on.
Edward B. Powell, son of Burr no heirs.
Geo. Cuthbert Powell, son of Burr. Children:
R. Randolph Powell, m. Di Kearney (dead).

Heirs:
Wm. G. Powell
Cuthbert Powell

Lucy Powell.

75 Conrad Powell, son of G. Cuthbert Powell (dead) no heirs.
Ida Dulaney (dead)

Heirs:
Rozier Dulaney
Mrs. Marrietta Belt
Mrs. Rebecca D. Beverley.

Kate Carter (dead).

Heirs:
George Carter
Conrad Carter
Grayce Carter Beach
Mary Custis Carter Patchin

Virginia P. Minnigerode (dead)

Heirs:
Marietta Andrews
Lucy Minnigerode
Charles Minnigerode
C. Powell Minnigerode
Fitz. Lee Minnigerode
George C. Minnigerode
Karl Minnigerode
Anne Minnigerode
Virginia M. Butler.

Frank Whiting Powell, son of Burr. Children:
John Henry Powell (dead).

Heirs:

John Powell
Bettie W. Brockenbrough
Rebecca Powell Carter
Carrie P. Williams
Children of Sarah P.
Coleman, dec'd.

William C. Powell (of Texas)
Edward B. Powell (Middleburg, Va.)
Mrs. Olivia Patterson
Mrs. Harriet P. Carmichael, children of Lewis Powell (Francis Powell and Mrs. Katherine de Bourgeois) Children of Bettie Strothers Mrs. Lizzie Lawson & Mrs. Hallie Early. Maj. Burr
76 Powell (son of Levin.)
Ann W. Powell, m. Noland. Children: Katherine Noland, m. Cochran (dead), Burr P. Noland (Dead), Richard Noland (dead).

Heirs of Katherine Noland:
Katherine Richards (nee Dudley) et al.
Dr. Henry Cochran (the Plains)

Heirs of Burr P. Noland:

Mrs. Anna Dabney
Mrs. Kate Garnett
Mrs. Lena Baxtall.

Heirs of Richard Noland:

Rev. Grattan Noland
Charles Noland
Preston W. Noland.

Sarah H. Powell m. Harrison. Children:
Mathew Harrison (dead).

Heirs:

Judge T. J. Harrison (Winchester)
Mrs. Sallie Winchester
Mrs. Hallie ——

William Harrison (dead) left heirs.
Powell Harrison (dead).

Heirs:

Charles Harrison (Leesburg)
Powell Harrison (Washington)
Mrs. E. White
Mrs. Lynn
Mrs. Walton Taylor

Anna Maria Harrison
Bettie W. Harrison.

Bettie Whiting Powell m. Conrad. Children:
Dr. Dan Conrad (dead) left heirs.
Kate Conrad (dead), no heirs.
Powell Conrad (dead) no heirs.
Holmes Conrad
Charles Conrad
77 Frank Conrad (dead) left heirs
Robert Conrad (dead) No heirs
Sallie Conrad Fauntleroy.

William L. Powell m. Ann M. Powell. Children:
Virginia Powell m. Taylor (dead).

Heirs:
William S. Powell
Francis W. Powell
Sarah H. Powell
Susan Powell Cottman
Cordelia P. Odenheimer
Children of Brooke Powell.

Col. Llewellyn Powell (dead) no heirs.
Brooke Powell (dead) no heirs.
Cuthbert Powell (dead)

Heirs:
Mrs. Ella Stearns
Dr. Cuthbert Powell (Denver)
Mary S. Powell
Louisa Powell.

William L. Powell (dead) no heirs.
Alfred H. Powell (dead) no heirs.
Dr. Robert C. Powell (dead).

Heirs:
Llewellyn Powell
Mary Powell Scott.

Francis W. Powell (dead) no heirs.
Nannie Powell m. Harrison (dead)

Heir:
Henry T. Harrison (Leesburg)

Levin Powell (son of Levin):
m.,
Miss Orr.

Children.

78 William A. Powell. John Levin Powell. Cuthbert H. Powell (no heirs). All deceased.

William Alex. Powell. Children:
D. Lee Powell (dead).

Heirs:
Arthur Powell
D. Lee Powell
Children of Ellin M. Ball.

Rev. John D. Powell (dead).

Heirs:
Richmond Powell
William Powell
Eloise Powell, m.
Annie Powell
Eliza Powell, m.

Dr. Alfred H. Powell (dead).

Heirs:
Cora Powell
Lucy Lee Powell
Ellen Powell.

Hugh Lee Powell
Lucy Lee, m. Lloyd (dead) No Heirs.
Mary Powell (dead) no heirs.
Marion Powell Jones
Antoinette m. Evans.
Florence m. Brookes.

John Levin Powell. Children:
Rosalie Powell, m. Rogers (dead).

Heirs:
Powell Rogers, et al.

Nannie Powell m. Myers (dead).

Heirs:
Mary Jeffreys, et al.
79 Sallie Powell Withers
Maria Thomas
Edward G. Powell (dead) no heirs:
Quilliam Powell
Walter Powell.
Lucien Powell.

Cuthbert Powell (son of Levin)
m.
Catherine Simms.

Children.

Llewellyn, Charles L., Cuthbert, John S., Levin, Anne M., Mary, Ellen Jane, Frances.

Frances Powell Gordon (living)
Llewellyn Powell (dead).

Heirs:
Fanny Powell
Lizzie Nash
Mittie Williamson
Charles H. Powell
Susan H. Hart
Child of Wm. W. Powell
" " Thos. B. Powell
Llewellyn Powell
Mary Knox Powell.

Charles L. Powell (dead).

Heirs:
Mrs. S. S. Hepburn
Miss Rebecca C. Powell.

Cuthbert H. Powell (dead), no heirs.
John S. Powell (dead).

Heirs:
Cuthbert Powell (Kansas City)
Ed. Lee Powell
Simms Powell
80 Charles L. Powell
Katherine S. Powell
Eleanor P. Potts
Laura P. Roberts
Sally Lee Powell

Levin Powell (dead), no heirs.

Ann M., m. W. T. Powell (dead) children:
Virginia Taylor (dead)
Brooke P. Taylor
Nannie P. McCormick
Rosalie T. McCormick.

Edward B. Powell (dead). Children:
Wm. S. Powell
Francis W. Powell
Sarah H. Powell
Susan Powell Cokman
Cordelia P. Odenheimer
Children of Brooke Powell, (dec'd)

Llewellyn Powell (dead), no heirs
H. Brooke Powell (dead) No Heirs.
Cuthbert Powell (dead), heirs:
Ella Stearns
Cuthbert Powell (Denver)
Mary Sayrs Powell
Louise Powell

William L. Powell (dead), no heirs.
Alfred H. Powell (dead), no heirs.
Dr. Robert C. Powell (dead).

Heirs:
Dr. Llewellyn Powell
Mary Powell Scott

Francis W. Powell (dead) no heirs.
Nannie Powell Harrison (dead).

**Heir:**
Henry T. Harrison, Leesburg

81 Cuthbert Powell (son of Levin)

Children.

Mary Powell m. Adie (dead). Children:
Mary Powell Adie.
George Adie (dead) no heirs.
Lewis Adie (dead) no heirs.
Ellen Gray Adie
Margaret Pope (dead).

**Heirs:**
George A. Pope
Stanley Swanson

Cuthbert P. Adie
Charles A. Adie

Tomasia Allison.
Ellen D. Gray (dead).

Heirs:
Katherine S. McDonald
Rev. Arthur P. Gray.

Jane Powell Grady (dead)

Heirs:
Edward Grady
C. Powell Grady
Frank Grady (dead) Heir:
Lucia Grady.

Sarah H. Powell (daughter of Levin)
m.
William Chilton.

Children.

William. John. Robert. Elizabeth. Mary. Ellen Phebe.

William—dead. Children:
Harriet Chilton Stuart
82 Carrie Montgomery & Brothers
Douglass Chilton (dead, left heirs.)

John—dead. Children:
John M. Chilton
Courttenage Chilton Parham
Sydney Newton Chilton

Charles N. Chilton (dead). Heirs:
P. N. Chilton
C. N. Chilton
Mrs. M. C. Middleton

H. R. Chilton (dead). Heirs:
Dr. C. M. Chilton
H. S. Chilton
Florence Chilton

Sarah Powell Chilton Devereux (dead).

Heir:
John Chilton Devereux

Robert (dead). Heirs:
Robert S. Chilton
Laura C. Wise.

Elizabeth m. Atkinson (dead). Children:
Dr. Robert C. Atkinson
" Archibald Atkinson (dead). Heirs:
Louis Atkinson
Mary C. Larus.
Marietta Wise (dead)
Heir: Marietta Wise.

Ella Atkinson, m. Boughton (dead). Heirs:
Herbert Boughton
Nellie Carrington

Mary, m. William Lee, dead. Children:
Mary M. Castleman (dead). Heirs:
Allen B. Castleman
Mary Castleman
Ida Castleman
Loula Castleman
Virginia Castleman.

83 William F. Lee (dead). Heirs:
Children of Capt. Simpson U. S. A.

Ellen M. Smith (dead) Children:
Ellen Douglass Smith
Channing M. Smith
Roberta C. Weaver.

Phebe m. Day (dead). Child: Dr. William C. Day.

WASHINGTON, D. C.,
SATURDAY, *October* 20, 1906—11 o'clock a. m.

Met pursuant to adjournment, at the office of Henry E. Davis, Esq., Jenifer Building.

Present on behalf of the complainant, Mr. Norton.

Present on Behalf of the defendant, Mr. Clephane.

Dr. CHARLES W. NEEDHAM, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined.

By Mr. NORTON:

Q. Doctor, will you state your connection with George Washington University? A. I am President of the George Washington University, formerly the Columbian, and have been since 1902.

Q. It was formerly called the Columbian University? A. Yes, sir.

Q. I show you a paper and ask you whether the latter part is a part of the catalogue? A. That is a statement of fact, that certain courses are insisted upon. The catalogue will show it, of
84 course, but it does not purport to be a copy of the catalogue.

Q. It is just the substance? A. Yes, sir.

Q. What was done by the Columbian University to carry out the Admiral Powell bequest? A. I can only speak from personal knowledge since my connection with the University as Trustee and afterward as Dean of the Law and Jurisprudence School, and since 1902 as its President. While I was Trustee of the University——

Q. When was that, Doctor? A. I think it was from 1893, or perhaps 1894, to 1898, when I became Dean of the Law and

Diplomacy School. This matter came up and was frequently or occasionally considered by the Board of Trustees. The University originally, in the preparatory department, as it was called, provided for the education of men coming within the terms of the Powell will, also opening certain courses in the college. After the close of the preparatory department, the provision was made for this work in the college, and the college was opened to the students that might apply for scholarships under this law. The university then advertised the work in its catalogues from year to year, stating the terms, and also the work that would be carried on. That has been enlarged in latter years, so as to make a suggestion of courses to students. The catalogue announcements have been furnished you, I believe.

Q. I will ask you Doctor, to give me the catalogue's announcement. A. I have here the extracts from the catalogue
85 referring to this matter, from the catalogue of 1885-6, that is for the academic year 1885-6, down to and ending with 1905-6, which are as follows:

*Catalogue Announcements.*

Columbian Academy.

1885–6. Under the terms of the "Admiral Powell Endowment" free scholarships will be given to a limited number of pupils who are preparing for admission to the United States Naval Academy at Annapolis.

1886–7. Ditto.

1887–8. Ditto.

1888–9. Under the terms of the "admiral Powell Endowment" free scholarships will be given to a limited number of pupils who are preparing for admission to the United States Naval Academy at Annapolis, and who, at the end of their course of study, shall actually enter that institution.

1889–0. Ditto.

1890–1. Ditto.

1891–2. Ditto.

1892–3. Ditto.

1893–4. Ditto.

1894–5. Ditto.

1895–6. * * * the "Admiral Powell Endowment" provides a few free scholarships, which will be given (under the
86 same conditions) to students preparing for admission to the United States Naval Academy at Annapolis.

1896–7. Ditto.

1897–8. The Powell Scholarships were founded by the late Admiral Powell, U. S. Navy. The income from this endowment is for "the free education of such young men as may desire to take advantage of the said endowment by way of their preparation for entrance into the Naval Academy at Annapolis, Maryland, or such as may fit

them to become Mates or Masters in the Merchant Marine Service of the United States, and of "such apprentices as having filled their time in the great steam manufactory establishments of the country, may apply for appointment from the United States Navy." The number of Scholarships awarded each year will be determined by the income from the endowment. Each scholarship will entitle the beneficiary to free tuition for one year. Such special courses of study are offered to each student as will give him the instruction needed to accomplish the purpose for which he is awarded the scholarship.

1898–9. Ditto.
1899–0. Ditto.
1900–1. Ditto.
1901–2. Ditto.

*Columbian College.*

1902–3. Ditto.

87

1903–4. Ditto.
1904–5. Powell Scholarships.—The Powell Scholarships were founded by the late Admiral Powell, U. S. Navy. The income from this endowment is for "the free education of such young men as may desire to take advantage of the said endowment by way of their preparations for entrance into the Naval Academy at Annapolis, Maryland, or such as may fit them to become Mates or Masters in the Merchant Marine Service of the United States," and of such "apprentices as, having filled their time in the great steam manufactory establishments of the country, may apply for appointment from civil life in the Steam Engineer Department of the United States Navy." The number of scholarships awarded each year will be determined by the income from the Endowment. Each scholarship will entitle the beneficiary to free tuition for one year. Such special courses of study are offered to each student as will give him the instruction needed to accomplish the purpose for which he is awarded the scholarship. Desirable courses are designated on page 78 of this bulletin. All courses of instruction are open to students of suitable age and attainments who wish, without reference to any degree, to pursue special studies.

*Subjects for Students Holding "Powell Scholarships."*

88 The subjects to be taken by the student will vary according to his preparation and according to the purpose for which he *ahs* been awarded the scholarship, but a year's work can be selected from the following topics:

| | Hours. |
|---|---|
| Navigation and Nautical Astronomy | 6 |
| Algebra and Geometry | 3 |
| Trigonometry | 1½ |
| Mechanical and Machine Drawing | 2 |
| Meteorology | 2 |
| English | 3 |
| French | 3 |
| German | 3 |
| Spanish | 3 |
| International Law | 1 |
| Commercial Geography | 1 |
| Admiralty Law | ½ |
| Boilers | 1 |
| Measurement of Power | 3 |
| Dynamo, theory | 2 |
| " testing | 3 |

1905–6. Admiral Powell Scholarships.—The Admiral Powell Scholarships were founded by the late Admiral Powell, U. S. Navy. The income from this endowment is for "the free education of such young men as may desire to take advantage of the said endowment by way of their preparation for entrance into the Naval Academy at Annapolis, Maryland, or such as may fit them to become
89 mates or Masters in the Merchant Marine Service of the United States," and of such apprentices as, having filled their time in the great steam manufactory establishments of the country, may apply for appointment from civil life in the Steam Engineering Department of the United States Navy." The number of scholarships awarded each year will be determined by the income from the endowment. Each scholarship will entitle the beneficiary to free tuition for one year. Such special courses of study are offered to each student as will give him the instruction needed to accomplish the purpose for which he is awarded the scholarship.

These scholarships are especially applicable to those who intend to come up for examination as warrant officers in the Engineer Department of the navy, or to those who desire to fit for responsible positions in the mercantile marine.

The subjects to be taken by a student will vary according to his preparation and according to the purpose for which he has been awarded the scholarship, but a year's work can be selected from the following topics:

| | Hours. |
|---|---|
| Navigation and Nautical Astronomy | 6 |
| Algebra and geometry | 3 |
| Trigonometry | 1½ |
| 90 Mechanical and Machine Drawing | 2 |

| | |
|---|---|
| Meteorology | 2 |
| English | 3 |
| French | 3 |
| German | 3 |
| Spanish | 3 |
| International Law | 1 |
| Commercial Geography | 1 |
| Admiralty Law | ½ |
| Boilers | 1 |
| Measurement of Power | 3 |
| Dynamo, theory | 2 |
| " testing | 3 |

Q. Up to 1903 the receipts from the property of the Admiral Powell bequest were credited into the general account of the college funds, were they not? A. The University was and is composed of the departments—the departments in the college and formerly the preparatory department. The income from this fund was credited to the college where the work was offered, not to the professional departments, but was credited to the college as distinct from the law schools or the medical schools. Separate accounts were kept.

Q. The proceeds came into the general fund and then were assigned to the departments in which these classes were to be taught? A. Yes, in the college.

Q. And since 1903 an account has been kept, designated
91 under endowments, as the Powell Scholarship Endowment?

A. Yes sir. We changed our system of accounts generally at that date, and it has been kept under that title ever since.

Q. When anyone applied for one of these Powell Scholarships, what would he have to do? A. He would have to file a written application, which went to the Dean of the College, the application stating his qualifications to take the course, and the purposes for which he was seeking his education. It was passed upon by the Dean, and if approved, came to me for approval, and then went to the treasurer's office, and he was admitted without any payment of tuition fees, to the course.

Q. Are those written applications kept? A. They are now. The records were kept very indifferently for many years in the early history of the college, because they did not have the system, and did not have men giving their whole time to the accounting. The accounts were kept by members of the Board of Trustees by the one who acted as Secretary-treasurer, and he was engaged in business and not giving his whole time to the college. Therefore the accounts for sometime were rather indifferently preserved. In later years, since we have had a man in charge of the business office, who gives his whole time to it, and since we have had bookkeepers, all of these papers are preserved.

Q. Since what time have they been preserved? A. I cannot tell you that, with reference to these particular papers, without looking it up. I could look it up and give it to you later. You understand they do not come to my office.

92 Q. I will ask you to have it looked up, and let us have the years during which they have been kept. A. I understand you to mean the applications?

Q. Yes. A. I will do so.

Q. Do you know of anyone who took advantage of this scholarship, who afterward entered the Naval Academy at Annapolis, Maryland? A. I have no personal knowledge of those matters, and I could not answer that question except to say that I have no personal knowledge about it.

Mr. CLEPHANE: The question and answer are both objected to on the ground that under the terms of the will the course of conduct subsequently pursued by students taking advantage of this endowment is immaterial.

By Mr. NORTON:

Q. You do not know whether any of them ever became mates or masters in the Merchant Marine Service of the United States?

(Same Objection.)

A. I do not.

Q. Or anyone who, after taking advantage of this scholarship, was appointed from civil life in the Steam Engineering Department of the United States Navy.

(Same Objection.)

A. No, I do not.

Q. The University keeps a register or catalogue of its old students, does it not? A. Yes it does. I cannot say how far back that may go, without examining, but I should presume there was
93 a record of all the students who have graduated.

Q. No one took advantage of this scholarship, so far as your records show, until the session of 1891-2, did they? A. That I cannot say. You would have to ask the registrar or the assistant treasurer for that information. He keeps the records.

Q. I have a list here. A. That was furnished from that office and I have no doubt it is correct, but I have no personal knowledge upon the subject.

Mr. CLEPHANE: This is a list furnished from the office, and I presume it is accurate.

The WITNESS: I have no personal knowledge of it.

Mr. CLEPHANE: As far as we are concerned, that may be introduced.

By Mr. NORTON:

Q. This was from your records, and although you do not know it personally, I presume of course it is correct? A. I have no doubt it is, but I have no knowledge about it personally.

Mr. CLEPHANE: We will admit as far as Dr. Needham has said, that this is a list furnished from our records, and is an accurate

transcript from said records. We know nothing further than that, and neither does Dr. Needham.

By Mr. NORTON:

Q. You had the records examined to find out who had taken the course? A. Yes, sir.

94 Q. And these are all your records show? A. Yes sir. The list is as follows:

*Students Who Have Actually Taken the Courses.*

With years of award of Powell Scholarships and addresses at time of registration.

Columbian Academy.

| | |
|---|---|
| W. P. Copeland, 1891-2 | 1729 F Street. |
| O. C. Minmack, 1891-2 | 1769 Q Street. |
| A. Stine, 1891-2 | 321 5th St. S. E. |
| R. S. Davis, 1891-2, 1892-3, 1893-4 | 1622 15th Street. |
| F. F. McElhone, 1891-2 | 2102 Ward Street. |
| P. E. Taussig, 1891-2 | 2911 P Street. |
| G. E. Green, 1893-4 | 1125 17th Street. |
| W. D. Owens, 1893-4, 1894-5, 1895-6 | 1204 N. H. Ave. |
| J. M. Beatty, 1894-5 | 631 2nd Street. |
| C. R. Schmidt, 1893-4 | 1218 9th Street. |
| C. T. Fugitt, 1894-5, 1895-6 | 1212 H Street. |
| R. Harlan, 1894-5 | 1229 10th St. S. E. |
| S. Mason, 1894-5 | 1706 F Street. |
| F. V. McNair, Jr., 1894-5, 1895-6, 1896-7 | Naval Observatory. |
| B. L. Porter, 1894-5, 1895-6, 1896-7 | 1538 I Street. |
| John Wignall, 1894-5, 1895-6, 1896-7 | Brookland, D. C. |
| W. J. G. Thomas, 1895-6 | 1[illegible]9 6 Street. |

Columbian College.

| | |
|---|---|
| E. McK. Chase, 1897-8 | |
| A. Pollok, 1897-8, | |
| A. C. Kelton, 1897-8 | |
| E. L. Weer, 1899, 1900 | |
| 95 A. F. L. Brandes, 1894-5, 1895-6 | Government Ptg. Office. |
| F. P. Noel, 1905-6 | 401 6th Street, S. E. |

Q. Are you personally acquainted with any of those on that list? A. I am not personally acquainted with them. These men who were in, in 1894-5, and in 1895-6, I have seen as students in the building, and it is quite possible they may have been in my office, but I have no other acquaintance with them.

Q. You do not know whether any of these ever went into the Navy, or the Engineering Department, or the Merchant Marine?

(Objected to on the grounds heretofore stated.)

A. No, I do not.

Q. Do you know whether any of those who took advantage of this endowment had any appointment to any of those three places mentioned in the bequest, when they took advantage of the endowment?

(Same Objection.)

A. I do not.

Q. Does the university possess a record, in a general way, of what its students have been doing since they left there—their occupations in life? A. No it has not.

Q. Nothing but the address? A. That is all.

Q. Nothing but the present residence? A. That is all, and that is not kept up. It is the residence at the time of graduation,
96 or while they are in the University. The Alumnæ Association keeps some record of its graduates, and keeps up their addresses. That is not a part of the University work, but it belongs to the alumnæ association.

Q. And the addresses given on this list, were they taken as of the time when the students were at the University, or are they from the alumnæ records? A. I cannot say.

Mr. CLEPHANE: The list shows on its face, "address at the time of registration."

By Mr. NORTON:

Q. All the University has been able to do, certainly since your connection with it, has been to advertise the scholarship in its catalogue, and to receive such men as were capable of taking the course which the college provided for? A. Yes, except that every year the work is overlooked, to see that we have men who are competent and ready to do the work. In making up the list of courses that can be pursued by students under this trust, we advertise only such work as we are prepared to give.

Q. There is no separate department for the Powell scholarship? A. Oh, no.

Q. Any young man who gets that scholarship would take courses in certain of the academic studies of the University? A. He would with this addition, that if there was some work especially in the particular course to prepare him for this work that we did not have,
we would provide it.

97 Q. Since you have been connected with the college, what especially has been provided for this particular endowment? A. Do you mean outside of the provisions already made in the college with our regular faculty?

Q. Yes. A. I do not recall any case, and yet I am under the impression that there was one instance where preparatory work was required, and it was supplied; but Dean Wilbur will be able to tell you that definitely. It falls under his jurisdiction.

Q. The answer of the college sets out "that it has appropriated the rents and profits collected from said property towards the pur-

chase of a proper equipment for the prosecution of the educational work entrusted to it by said Powell, by virtue of his last will and testament as herein above recited. It has secured and maintained such equipment, and has provided and maintained, at great expense, a faculty for teaching the subjects embraced within the terms of said trust." Of this you have no personal knowledge? A. I know that we maintain a faculty, and that we invest a good deal of money annually in outfit for the work in the college.

Q. But that, as you have said, is for general college work, and not particularly applied to this scholarship? A. No special investment is made for outfit for doing this particular work. It is
98 the maintenance of the faculty and keeping the courses, the laboratories, and equipments of the college.

Q. And personally you cannot give any particular outlay that was made in order to carry out this endowment? A. For this express purpose?

Q. Yes. A. No, I cannot.

Mr. NORTON: I wanted to make that clear, because I was afraid there would be a little misapprehension on the record. I believe that is all.

Mr. CLEPHANE: I will cross-examine Dr. Needham after these records are produced.

(The further taking of the depositions of this witness is adjourned, subject to notice, by agreement.)

HOWARD L. HODGKINS, a witness of lawful age, called by and on behalf of the complainants, after being first duly sworn, was examined:

By Mr. NORTON:

Q. State your full name. A. Howard L. Hodgkins.

Q. What is your connection with the George Washington University? A. I am a professor of physics and Dean of the Washington College of Engineering.

Q. What, if any, particular arrangement is made in the college for carrying out the Admiral Powell scholarship? A. When a student applies and in our belief comes under the terms of the scholarship, we then will arrange such course of study as
99 will best fit him, in connection with his past work, for the examination for the position that he is seeking.

Q. What brings him under the terms of the scholarship? A. Well, as I understand the scholarship, a man is expected to be one who is preparing for the Naval Academy, one who is preparing for the Merchant marine service, or one who is preparing for a position as engineer in the Navy from civil life.

Q. Does his application come before you as Dean of your department, or the Dean of the college. A. They may come before me or they may come before the Dean of the College, according to circumstance. I may say that I have one before me at the present time.

Q. I believe you have been with the college since 1897? A. No

sir. I have been connected with the college in various capacities, on the instruction force, since 1882.

Q. Have you ever had any students who are seeking to take this scholarship in order that they might obtain an appointment as mate or master in the merchant service? A. We have had students. As to whether the students came under my jurisdiction might be a question, but we had one two years ago, who received the scholarship and took a course for that purpose. According to the methods of administration then in force at the University, the student consulted with me as to his course. I took it up also with Professor Wilbur, and I signed an application the first year as chairman of the
100 committee in charge of Bachelor of Science work.

By Mr. CLEPHANE:

Q. What year was that? A. 1904.

By Mr. NORTON:

Q. So far as I know, there is no Merchant Marine service of the United States. I should like you to explain what the young man expected when he was taking the course for appointment as master or mate in the merchant marine service of the United States?

Mr. CLEPHANE: So much of the alleged question as attempts to state a matter of fact is objected to on the ground that counsel is not on the witness stand. The question is further objected to upon the ground that it is obviously impossible for this witness to state what any young man might have expected at the time he made application for the scholarship. The question is further objected to on the ground that the testimony does not show that the young man in question expected to take an appointment in the merchant marine service of the United States.

A. The young man had served on board vessels as a sailor, as I recall, and submitted papers showing that he had done so; and stated that he desired to get such an education as would enable him to serve as a mate on board a vessel sailing under the United States flag; and that I understand is merchant marine service.

Q. So far as you know has any special provision been made
101 for carrying out the Admiral Powell bequest? A. It is difficult to answer without understanding just what you mean by special provisions.

Q. I mean special provisions to enable you to give the year's education called for in the Powell scholarship? A. I may answer that by referring to the case of this same young man again, that we believe from what he said that he was ready for a certain course in mathematics, which course we give. We found that it was giving him difficulty, and therefore we arranged for a special course in mathematics, that was not ordinarily given in the University, to give him the exact preparation that he needed.

Q. That was given him without the employment of any additional professors? A. An explanation is probably necessary there. My brother, who was formerly an instructor in the University, had

been given permission to use a room in the University for a private class, and he offered, without any expense to the University, to take this young man in his class.

Q. And that is the only instance you know of any special provision? A. No, sir. There was another case last year that came, not directly under my administration, but that of Dean Wilbur. But I helped to arrange the course for a man, with our professor of mechanical engineering, and after he was obliged to give up his class because of sickness, the substitute who was employed in his place gave some special work in marine engineering to a man who was on the scholarship.

102 Q. Was that work specially paid for by the college? A. The instructor was on a regular salary, and he simply gave it as a part of his university work, on that salary.

Q. Had that young man you just speak of served his time in some great steam manufacturing establishment of this country? A. No sir, not to my knowledge.

Q. And was he afterwards appointed from civil life to the steam engineering department of the United States Navy?

Mr. CLEPHANE: That question is objected to as immaterial under the terms of the will?

A. Not to my knowledge.

By Mr. NORTON:

Q. Can you give me any other instance where any special provision was made outside of the regular classes of the college for carrying out the Powell scholarship? A. I do not recall any.

Q. Will you please state which one on the list of those who have taken this scholarship, testified to by Dr. Needham, you were acquainted with? A. I remember some of these. It is very probable that I knew at one time most of them. I remember the young man named McElhone; I remember the man named Taussig. I remember Mr. Green. I remember Beatty. I remember Fugitt, Harlan, Chace, Brandes and Noel. I notice the omission of one name of a student who had that scholarship last year.

103 Q. How was that? A. I notice that the name of one student who had that scholarship last year is omitted from the list, a young man named Sampson, a son of the late Admiral Sampson.

By Mr. CLEPHANE:

Q. Will you please give his full name? A. I think it was Ralph Earle Sampson. He entered in March of last year.

By Mr. NORTON:

Q. That was evidently after this list was furnished. A. I presume so.

Q. Did any of those you have named, with whom you were acquainted, go into the Navy of the United States or the Merchant

Marine service of the United States, or the steam engineering department of the United States Navy.

Mr. CLEPHANE: That question is objected to as immaterial and irrelevant to the terms of the endowment.

A. I do not know what most of these young men have done. The only one that I am certain of is the last one that I named, Mr. Sampson.

Q. Do you know whether Mr. Sampson had an appointment to the Naval Academy when he came for his preparation? A. From the statements in the newspapers and from his own statements to me I was informed that he had. I did not see the official appointment at all.

Cross-examination.

By Mr. CLEPHANE:

104 Q. I understand that aside from those gentlemen you mentioned you have no personal recollection of the other gentlemen on this list which has been referred to? A. No, I am uncertain about them. I see so many students that I cannot recall all of them.

Q. As to those other gentlemen you do not know either what their intentions were when they applied, or what they subsequently did, after leaving the university? A. No, in none of those cases did the matter come before me officially.

Q. Do you remember with regard to any of the names of gentlemen whom you say you do recollect, whether they stated their intentions to you at the time they made application for this course. A. I have no recollection. There is no reason why they should, because I was not administering the scholarship matter in the case of any of those except the last ones.

Q. May there have been other cases besides the two which you mentioned, where special provision was made for their instruction outside of the regular courses? A. I presume that there was, if necessary. I do not know.

Q. Has any applicant for a scholarship under this endowment ever been rejected by the university so far as you know, who was qualified to take the instruction offered? A. None.

Re-direct examination.

By Mr. NORTON:

105 Q. You have no knowledge, however, except as to these two cases you have named of any special provision made to carry out the scholarship? A. No sir.

HOWARD L. HODGKINS.
*By the Examiner on Consent.*

Subscribed and sworn to before me this — day of——, 1906.

——, *Examiner.*

WILLIAM ALLEN WILBUR, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn was examined:

By Mr. NORTON

Q. Please state your connection with the George Washington University? A. I am the Dean of Columbian College, and Professor of English in the University.

Q. Does any part of the Admiral Powell scholarship come under your division? A. There are courses of study offered in the college that would very naturally be applied for by men desiring instruction under the terms of the scholarship?

Q. Is there any special provision made in the college for
106 carrying out the Admiral Powell bequest, or is the instruction given to those who obtain scholarships in such of the departments as are already established—I mean the general departments of the college? A. The major part of such instruction would naturally be in the courses that are continuous from year to year, in our regular courses of study.

Q. Will you please look at the list which has been testified to as being those who took the Admiral Powell scholarship, and state if you had acquaintance with any of them? A. I have responsible knowledge of the last two on the list, in Columbia College: A. F. R. Brandes and F. P. Noel. I have knowledge of others, but not as Dean of Columbian College, or Professor of English; but when I first came to Washington, I came as Dean of the Columbian Academy, and had the administration of that interest for two years.

Q. Will you please name those that you knew in any way as having been scholars at the college, or Columbian University? A. I knew B. L. Porter and S. V. McNair; and W. D. Owens, as Powell scholarship boys in the Columbian Academy.

Q. Any others that you know as being connected with the university? A. W. J. G. Thomas, and John Wignall. Those I think are the only ones that were in the academy under my jurisdiction, who were scholarship men.

Q. Do you know any of the others as being connected
107 with the college at all? A. If you will permit me, there is likely to be a confusion of terms in reference to the college and the academy, because the list I have been speaking of there is the academy list, of preparatory instruction in the academy. It was preparatory for instruction in the college, and it was discontinued two years after I came here; and some of these men were academy boys and some were college boys. Mr. Brandes and Mr. Noel have been under my administration in Columbian College. The others were under my administration in the academy in the years, 1895-6 and 1896-7.

Q. Are you acquainted with any of the others on the list testified to as having taken the scholarship, as being connected with the university, under the name of the Columbian University, or the George Washington University? A. Yes, I know S. Mason, R.

Harlan, J. M. Beatty, G. E. Green, and in the Columbian College list A. C. Kelton. Those are all that I know on this list.

Q. Did any of those you have mentioned, that you are acquainted with, receive an appointment to the Naval Academy, or as officers of the line in the Navy of the United States, or did they secure appointments as mates, or captains, in the merchant marine service of the United States, or did they receive an appointment from civil life into the steam engineering department of the United States Navy.

Mr. CLEPHANE: The question is objected to as calling for information which is irrelevant and immaterial under the terms of
108 the endowment?

A. S. V. McNair received an appointment to the Naval Academy and is now an officer in the Navy. He is a son of Admiral McNair.

Q. When did he receive an appointment to the Naval Academy, if you know? A. I do not know. I simply know the fact of his being there. It was after he had completed his studies at the Academy.

Q. About how long after as nearly as you can come at it? A. It would be largely guess work if I should answer that. I have no definite knowledge about it.

Cross-examination.

By Mr. CLEPHANE:

Q. Is there any other case that you recall, of any of these gentlemen having any papers on file showing that they have ever been in the merchant marine service, or that they intended to go into the merchant marine service? A. Mr. Brandes submitted to me official papers that he had, that were issued from San Francisco, certifying his service in the merchant marine service of the United States, that he has served as a carpenter and as a mate, and he desired to fit himself for further service. He was a man about thirty years old when he came to the college two years ago.

Q. Do you know whether he expressed any intention of going into that service again? A. Yes sir. That was the motive of his
109 request for study, to prepare himself for that.

Q. I will take the last name on the list, Mr. F. P. Noel. Do you know anything about him, with regard to his service in the Navy or the marine service of the United States? A. Noel had been for sometime a machinist on the United States ship Puritan, and he brought to me a letter from the chief engineer of that ship, testifying to his good record and his ambition to get studies that would help him in seeking an appointment as warrant officer in the engineer corps in the Navy.

Q. Have you any means of knowing what appointments the gentlemen who have graduated from this scholarship have subsequently received? Would such knowledge come to you in any official capacity? A. No.

Q. If such knowledge did come to you it would be only incidental? A. That is all.

Q. How long have you been connected with the Columbian University, now the George Washington University? A. Since the fall of 1895.

Q. And at that time, I understand you, you came as the Dean of the Columbian Academy? A. Yes sir.

Q. So that personally you know nothing about any of the students under the endowment who were students prior to the time when you became connected with the institution? A. No sir.

110 Q. Since you became connected with the institution, about how many students have come under your supervision in all, not confining yourself now to the Powell scholarship, but generally? A. Do you mean the entire student body for all these years?

Q. Yes. A. Between 2,500 and 3,000 students.

Q. How large a percentage of those can you personally recollect? A. Well, rather a small percentage only. It has been something of a trial to me that I could not recollect them all, because they remember me, and they would like to have me remember them, I suppose, but that is a fact, that it is only a small percentage whom I can remember.

Q. Of those whom you can personally recollect, how large a percentage could you place in the courses which they actually took in the University, from recollection? A. Well, I can place the most of them in my own courses, but there are very few that I can place in the courses given by other professors.

Q. You picked out of the list of students taking advantage of the Powell scholarship fund, the names of certain men whom you personally remembered. Do you mean to say that there are no other men than the men whose names you picked out, who took advantage of that course while you have been connected with that institution? A. I think my memory is pretty clear about the fund in the years when I had responsible charge of it in the academy and in

111 the Columbian College. That is in all four years, the first two years that I was in Washington, and the last two years *the last two years* as Dean of the College, and the first two years as Dean of the Academy.

Q. You omitted the names of C. T. Fugitt, E. McK. Chace, A. Pollok and E. L. Weer. Would you undertake to say that these gentlemen did not study in the University under the Powell endowment? A. No, I would not. I know that the record shows that Mr. Fugitt was a Powell scholarship student, and I find that my personal recollection about him as a Powell scholarship student fails. Him I remember very well.

Mr. CLEPHANE: That is all.

Mr. NORTON: That is all.

WILLIAM ALLEN WILBUR,
*By the Examiner by Consent.*

Subscribed and sworn to before me this — day of ——, 1906.

——— ———,
*Examiner.*

The further taking of testimony in the above-entitled cause is adjourned subject to call.

112 APRIL 9TH, 1907—11 o'clock a. m.

Met, pursuant to agreement of counsel at the office of Henry E. Davis, Esq., in the Jenifer Building, Washington, D. C., on Tuesday, April 9th, 1907, at 11 o'clock A. M.

Present: Henry E. Davis on behalf of the complainant and Walter C. Clephane, Esq., on behalf of the defendant.

Whereupon CHARLES W. NEEDHAM was recalled for further examination on behalf of the complainant.

By Mr. DAVIS:

Q. Doctor, you have heretofore furnished a list from the records of the University of all students who have actually taken the courses, with years of award of the Powell Scholarship and times and addresses of the registration. You have been asked since your last examination, to produce, if possible, the applications of the students for admission either to the University or to the courses. Are you able to do so? A. I can produce all that have been made since the present application blanks were adopted. Prior to that time there were no formal application blanks. The students were entered, and opposite their names there is no charge for tuition on the books. They are simply noted as Powell Scholarships. Since the present application blanks have been adopted there have been four applications, including one since my last testimony was given, and I have those here.

113 Q. Have you any letters or correspondence in any form from these students connected with their applications? A. So far as there has been any correspondence in the four cases referred to, I have brought it here.

Stipulation: It is stipulated between counsel that the papers produced by the witness may be transcribed into the record and have the same force and effect as the originals, and that the witness may retain the originals after transcription.

(Which papers have been copied by the Examiner and marked Exhibit J. A. S. No. 1.)

Q. You said, Doctor, that prior to the time you have indicated there were no formal applications made by students for admission to the University, and that as they applied in person they were admitted to one course or another, and assigned accordingly? A. Yes.

Q. And that is true of all the courses and branches of the University? A. I think so up to the time that the present application blanks were adopted.

Cross-examination.

By Mr. CLEPHANE:

Q. In your direct examination, Dr. Needham, you had something to say about the students who had been registered in this course at the Columbian Academy. I wish you would state just what the relations between the Columbian Academy and the Columbian University, as it was then called, were? A. The Columbian Academy was a preparatory school or a secondary school, as
114 it is commonly known, maintained by the University. It was one of its departments of work. It prepared students for college.

Q. Is that department any longer in existence? A. No, it is not.

Q. When that department went out of existence what became of the work that had been done in it, so far as these Powell scholarships were concerned? A. It was transferred to the Columbian College.

Q. You spoke of the name Columbian College. What is the difference between the Columbian College and Columbian University? A. When the name was changed from the Columbian University to the George Washington University, the Columbian College was organized as a sub-college of the University, under the general control of the university, and its faculty paid by the university. But the change was made in order to preserve the old name Columbian College, and to carry on the undergraduate work through the college instead of through the University Board.

Q. By what authority was the name changed from the Columbian University to the George Washington University? A. By a special act of Congress authorizing the change in name.

Q. Do you recall the date of that, Doctor? A. It was in 1904. I cannot give you the exact date of the act. I can furnish it to you

Q. If you don't remember it it does not make any difference. A. In 1904; and in 1905 the charter was again amended so as
115 to permit the organization of colleges under the University charter; and Columbian College is now organized under the University charter as a college, doing undergraduate work.

Q. The bill of complaint in this case alleges that, acting upon a supposed right of the defendant University, the defendant sometime in the year 1885, took possession of the premises involved in this case, upon the trusts set forth in said will, and has had and retained absolute possession of the same ever since, as it does now. Is that allegation true? A. Yes.

Q. Has there been any time when the University was not in possession of these premises? A. Not since possession was taken under the will.

Q. Has there been any time when the University has ever failed to assert its right to possession under the terms of this will? A. No, not so far as I know.

Q. What do the premises consist of? A. A house and lot on I Street?

Q. Are they enclosed? A. Yes.

Q. The house is of what character? A. It is what is known as a double house with a hall in the center, and rooms on each side of the hallway, and two rooms deep with dining room extension.

Q. Has any other person or corporation had any control over the property, if you know? A. No.

116 Q. During that period has the University paid the taxes on the property? A. Yes.

Q. And kept it in repair? A. Yes.

C. W. NEEDHAM,
*By the Examiner by Consent.*

It is agreed that the Examiner may sign this deposition for the witness.

Mr. DAVIS: I now offer in evidence the certificate of Truman H. Newberry, acting Secretary of the Navy, under date of March 23, 1907, the certificate of C. W. Rae, Engineer in Chief of the United States Navy, of date March 14th, 1907; the certificate of G. A. Converse, Chief of the Bureau of Navigation, Navy Department, and the annexed papers, being a copy of the list of students heretofore furnished by the witness, who has just testified, and the certificate of the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, of date, February 20th, 1907, to be marked Exhibit J. A. S. No. 2.

Mr. CLEPHANE: This proffer of testimony is objected to upon the ground that there is no rule of evidence or statute permitting certificates of this kind to be filed and treated as evidence; and furthermore that if the evidence supposed to be contained in this certificate should be offered in the proper manner, it would be

117 irrel-vant and immaterial under the issues involved in these proceedings.

It is agreed that the Examiner may sign the deposition of the witness Rebecca C. Powell, as and for her.

Mr. DAVIS: We announce the close of the testimony on behalf of the complainant.

118 Registered, No. 121. File No. 421c.

The George Washington University

Department of Arts and Sciences.

Washington College of Engineering.

WASHINGTON, D. C., *March* 2, 1906.

To the President of The George Washington University:

I hereby make application for admission to the Division of Architecture for the academic year 1905-1906 as a student in the following courses:

| University subject. | Course. No. | Hours. | Endorsement. |
|---|---|---|---|
| Applied Mathematics. | | | |
| Archæology. | | | |
| Architecture. | | | |
| Astronomy. | | | |
| Astro-Physics. | | | |
| Botany. | | | |
| Chemistry. | | | |
| Civil Engineering. | | | |
| Electrical Engineering. | | | |
| English. | | | |
| French. | | | |
| Geology and Mineralogy. | | | |
| German. | | | |
| Graphics. | | | |
| Greek. | | | |
| History. | | | |
| Italian. | | | |
| Latin. | | | |
| Mathematics. | | | |
| Mechanical | 20 | 3 | |
| Engineering | 22 | 2 | |
| Meteorology. | | | |
| Philosophy. | | | |
| Physics. | | | |
| Political Science. | | | |
| Sociology. | | | |
| Spanish. | 1 | 3 | |
| Zoology. | | | |
| Law. | | | |
| Medicine. | | | |

119 Total hours, 8 (½ year). Laboratory Courses ——.

Legal residence: State D. C. City Washn; Washington address 1613 N. H. Ave.

Name and address of Parent or Guardian Mrs. E. B. Sampson, Born Dec 15, 1886

Race Cau: Age on October 1st, 190-, 18 years 10 months: Entering on 1st year of attendance as Special student.

for graduation in — of the present academic year.

from ——; — in — from ——

Have previously been registered in the University as follows: ——

Mr. Sampson, Ralph / Earle

Approved March 21 1906

H. L. HODGKINS, *Dean.*

MARCH 21, 1906.

Registration under the above application for the academic year 1905-1906.

RALPH EARLE SAMPSON.

# THE GEORGE WASHINGTON UNIVERSITY

OFFICE OF THE REGISTRAR

RECORD OF RALPH EARLE SAMPSON

## COLLEGE OF ENGINEERING

| Subjects | Year | Hrs. | 1st Term | 2d Term |
|---|---|---|---|---|
| Applied Math | | | | |
| ~~Astronomy~~ | | | | |
| Architecture | | | | |
| Astronomy | | | | |
| ~~Astro-Physics~~ | | | | |
| ~~Botany~~ | | | | |
| Chemistry 1 | | | | |
| " 2 | | | | |
| " 3 | | | | |
| " 6 | | | | |
| Civil Eng. 5 | | | | |
| " 7 | | | | |
| Economics | | | | |
| ~~Mech Engineering~~ | | | | |
| Mech Eng. 20 | 1905 | | | F |
| English 22 | 6 | | | C |
| " 4 | | | | |
| French | | | | |
| " | | | | |
| Geol. and Miner. | | | | |
| German | | | | |
| " | | | | |
| Graphics | | | | |
| Greek 1 | | | | |
| " 3 | | | | |
| History 1 | | | | |
| Italian | | | | |
| Latin 1 | | | | |

| Subjects | Year | Hrs. | 1st Term | 2d Term |
|---|---|---|---|---|
| Latin 3 | | | | |
| Math. | | | | |
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| Mechanical Eng. | | | | |
| Meteorology | | | | |
| Philosophy 1 | | | | |
| Physics 1 | | | | |
| " 2, 3 | | | | |
| Political Science | | | | |
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| | | | | |
| Sociology | | | | |
| Spanish | | | | |
| Zoölogy | | | | |
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A=96-100; B=90-95; C=80-89; D=70-79; E=FAILURE; F=FAILURE TO APPEAR

REMARKS:

190 121 Over

REGISTRAR

Name Sampson Ralph Earle File No. 421c

Washington Address 1613 N. H. Ave

al Residence; State D. C. City

Parent or Guardian Sampson Mrs E. B.

Age on October 1, 1905: 18 Years, 10 Months

Degree sought Special

School last attended

Admitted on as with conditions noted

Conditions removed;

Hours available for course

Matriculated Mar 21 190 6 Reg. No. 121 Registered 190 , No.

Registered 190 , No. Registered 190 , No.

Registered 190 , No. Registered 190 , No.

Registered 190 , No. Registered 190 , No.

Withdrawn 190 . Dropped 190 . Reinstated 190

Degree of conferred

ed; State City

1

| PREPARATORY SUBJECTS | UNITS CONDITIONED | UNITS CREDIT |
|---|---|---|
| English | | |
| Latin, elementary | | |
| " advanced | | |
| Greek, elementary | | |
| " advanced | | |
| French, elementary | | |
| " advanced | | |
| Spanish | | |
| German, elementary | | |
| " advanced | | |
| History, ancient | | |
| " , mediæval and modern | | |
| " , English | | |
| " , American | | |
| Civics | | |
| Mathematics, elementary algebra | | 2½ |
| " , advanced algebra | | 1 |
| " , plane geometry | | |
| " , solid geometry | | |
| " , plane trigonometry | | |
| Physics | | |
| Chemistry | | |
| Botany | | |
| Zoölogy | | |
| Physiography | | |
| Drawing | | |
| Shopwork | | |
| Degrees held | | |
| | | |
| | | |
| | | |
| | | |
| Total | | |

1

120 The George Washington University,

Washington, D. C.

Office of the President.

MARCH 20, 1906.

DEAR MR. SWETT: Mr. Ralph Earle Sampson has been awarded the Powell Scholarship for the second semester of the present academic year.

Very truly yours,

CHAS. W. NEEDHAM.

MR. OTIS D. SWETT, *Registrar.*

(Here follows fac-simile of registration card, marked pages 121 and 122.)

123 *Copy.*

MARCH 20, 1906.

MY DEAR MR. SAMPSON: I have your request for a Powell Scholarship in the College of Engineering for the last half of this year, and am pleased to inform you that the request is granted. Should you desire this scholarship for the next academic year your application therefor should be filed on or before the first of June next.

You will matriculate with the Registrar and report to Dean Hodgkins.

Very truly yours,
(Signed) CHARLES W. NEEDHAM.

Mr. Ralph Earle Sampson, 1613 New Hampshire Avenue, Washington, D. C.

124 *Registration Check List.*

Not to Be Detached.

| | |
|---|---|
| | 5 |
| Application complete. | 2 |
| Approved by Dean. | 95 |
| Applicant notified. | |
| Registered Powell. | |
| Recorded Scholarship. | |
| Charged. | |
| Carded. | |
| File numbered. | |
| Approved by President. | |
| Applicant notified. | |
| Finished, File. | |

EXHIBIT J. A. S. No. 1.

Registered —, No. 269. OE
File No. 499c

The George Washington University,

Department of Arts and Sciences,

Columbian College.

WASHINGTON, D. C., *October* 16, 1905.

To the President of The George Washington University:

I hereby make application for admission to Columbian College for the academic year 190-190- as a student in the following courses:

| University subject. | Course. No. | Hours. | Endorsement. |
|---|---|---|---|
| Applied Mathematics. | | | |
| Archæology. | | | |
| Architecture. | | | |
| Astronomy. | | | |
| Astro Physics. | | | |
| Botany. | | | |
| Chemistry. | | | |
| Civil Engineering. | | | |
| Economics. | | | |
| Electrical Engineering. | | | |
| English. | 2 | 2 | |
| French. | | | |
| Geology and Mineralogy. | | | |
| German. | | | |
| Graphics. | 1 | 2 | |
| Greek. | | | |
| History. | | | |
| Italian. | | | |
| Latin. | | | |
| Mathematics. | | | |
| Mechanical Engineering. | 20 | 3 | |
| | 22 | 2 | |
| Meteorology. | | | |
| Philosophy. | | | |
| Physics. | | | |
| Political Science. | | | |
| Sociology. | | | |
| Spanish. | | | |

Zoology.
125 Law.
Medicine.
Total Hours, 9. Laboratory Courses ——
Legal residence: State Maryland City Baltimore; Washington Address.
Name and address of Parent or Guardian Mary E. Noel.
Race White: Age on October 1st, 190-, 23 years 4 months; Entering on 1st year of attendance as Special student.
Am — a candidate for graduation in —— of the present academic year.
Have been previously registered in the University as follows:
Mr. Noel. Fabian Peter.
Approved Sept. 30, 1905.
Powell Schol. WM. A. WILBUR, *Dean.*
Approved:
CHAS. W. NEEDHAM. FABIAN P. NOEL, 1905.

Registration under the above application for the academic year 190-190-.

126 The George Washington University.

Washington, D. C.

Columbian College,
Office of Dean.

Mr. Fabian P. Noel is assigned a Powell Scholarship.
WM. A. WILBUR.
Oct. 18, 1905.

127 Naval Battalion N. G. D. C.

U. S. S. Puritan.

WASHINGTON, D. C., *August* 24, 1905.

Mr. Otis B. Swett, Registrar George Washington University, Washington, D. C.

DEAR SIR: Mr. Fabian Noel has informed me that he has applied for the Admiral Powell Scholarship, as he intends to take the examination for Warrant Machinist in the Engineer Department of the United States Navy, and he desires me to write you a word of commendation in his behalf.

I have been closely associated with Mr. Noel for the past three years and during that time have had an excellent opportunity to observe his work.

Without exaggerating I may say that he is a most thorough workman and conscientious and inspiring mechanic. His work as a Chief Machinist on board the U. S. S. Puritan has been of the highest order.

EXHIBIT J. A. S. No. 1.

Registered —, No. 269. OE
File No. 499c

The George Washington University,

Department of Arts and Sciences.

Columbian College.

WASHINGTON, D. C., *October* 16, 1905.

To the President of The George Washington University:

I hereby make application for admission to Columbian College for the academic year 190-190- as a student in the following courses:

| University subject. | Course. No. | Hours. | Endorsement. |
|---|---|---|---|
| Applied Mathematics. | | | |
| Archæology. | | | |
| Architecture. | | | |
| Astronomy. | | | |
| Astro Physics. | | | |
| Botany. | | | |
| Chemistry. | | | |
| Civil Engineering. | | | |
| Economics. | | | |
| Electrical Engineering. | | | |
| English. | 2 | 2 | |
| French. | | | |
| Geology and Mineralogy. | | | |
| German. | | | |
| Graphics. | 1 | 2 | |
| Greek. | | | |
| History. | | | |
| Italian. | | | |
| Latin. | | | |
| Mathematics. | | | |
| Mechanical | 20 | 3 | |
| Engineering. | 22 | 2 | |
| Meteorology. | | | |
| Philosophy. | | | |
| Physics. | | | |
| Political Science. | | | |
| Sociology. | | | |
| Spanish. | | | |

Zoology.
125 Law.
Medicine.
Total Hours, 9. Laboratory Courses ——
Legal residence: State Maryland City Baltimore; Washington Address.
Name and address of Parent or Guardian Mary E. Noel.
Race White; Age on October 1st, 190-, 23 years 4 months; Entering on 1st year of attendance as Special student.
Am — a candidate for graduation in —— of the present academic year.
Have been previously registered in the University as follows:
Mr. Noel. Fabian Peter.
Approved Sept. 30, 1905.
Powell Scho-l. WM. A. WILBUR, *Dean.*
Approved:
CHAS. W. NEEDHAM. FABIAN P. NOEL, 1905.

Registration under the above application for the academic year 190-190-.

126 The George Washington University.

Washington, D. C.

Columbian College,
Office of Dean.

Mr. Fabian P. Noel is assigned a Powell Scholarship.
WM. A. WILBUR.
Oct. 18, 1905.

127 Naval Battalion N. G. D. C.

U. S. S. Puritan.

WASHINGTON, D. C., *August* 24, 1905.

Mr. Otis B. Swett, Registrar George Washington University, Washington, D. C.

DEAR SIR: Mr. Fabian Noel has informed me that he has applied for the Admiral Powell Scholarship, as he intends to take the examination for Warrant Machinist in the Engineer Department of the United States Navy, and he desires me to write you a word of commendation in his behalf.

I have been closely associated with Mr. Noel for the past three years and during that time have had an excellent opportunity to observe his work.

Without exaggerating I may say that he is a most thorough workman and conscientious and inspiring mechanic. His work as a Chief Machinist on board the U. S. S. Puritan has been of the highest order.

Personally I would be very sorry to lose Mr. Noel's services. I however, heartily wish him the success and advancement he so well deserves, and I take pleasure in commending him to you.

Yours very respectfully

W. H. LANTZ.
*Chief Engineer, Naval Reserves, N. G. D. C.*

128 WASHINGTON, D. C.

Mr. Wm. A. Wilbur, Dean, The George Washington University.

DEAR SIR: Kindly permit me to offer myself as a candidate for the Admiral Powell Scholarship in the George Washington University.

The following is a brief statement of my qualifications and experience. I served four years apprentice-ship at the trade of machinist and employed at present in the Naval Gun Factory. I am a member of the Naval Reserves, D. C. N. G. and hold the position of Chief Machinist on board the U. S. S. Puritan.

In regard to the character of my work the enclosed testimonial will doubtless be of more value to you than any statement I might make in my own behalf.

Yours very respectfully.

FABIAN P. NOEL.

129 WASHINGTON, *March* 1, 1905.

*Circular Letter Relating to the Appointment of Warrant Machinists.*

Article 1746, U. S. Navy Regulations.

(1) Vacancies in the list of warrant machinists shall be filled by competitive examination before a board ordered by the Secretary of the Navy and open to all machinists by trade who are in the Navy, and machinists of good character, not above thirty years of age, in civil life, authorized by the Secretary of the Navy to appear before the board. When candidates from civil life and from the naval service possess equal qualifications, preference shall be given to those from the naval service.

(2) Applications from enlisted men in the Navy must be made to the Secretary of the Navy through the proper official channels. Applications from machinists in civil life must be made direct to the Secretary of the Navy. No person will be examined who is not a citizen of the United States. With each application there must be, either in indorsements attached to the application or in separate letters, statements of opinion from the commanding officer and the engineer officer under whom the candidate is serving at the time of making the application. These opinions will be limited to the question of whether the applicant is regarded as qualified for the position of warrant machinist and worthy of such advancement. Similar letters or indorsements must be obtained by the candidates,

wherever practicable, from commanding officers and engi-
130 neers with whom he has formerly served. The conduct and efficiency reports on file in the Navy Department will also be consulted in making up the candidate's record.

(3) Applicants from civil life must furnish satisfactory evidence of good moral character and correct habits, and certificates showing experience in machine shop or in charge of a steam engine and in the engine room of a steamer. No applicant from civil life will be examined who is not a machinist by trade and has not had eighteen months' experience in a machine shop or responsible charge of a steam engine for that length of time, and in addition to the foregoing care and management of the steam machinery of a seagoing vessel in actual service.

(4) All candidates will be required to pass a satisfactory examination before a board of naval surgeons as to their physical fitness for the service.

(5) The candidate must be able to read and write with facility and have sufficient knowledge of arithmetic to enable him to keep the engine-room log book and an account of stores when necessary. The examination in arithmetic will be limited to the addition, subtraction, multiplication, and division of whole numbers and vulgar and decimal fractions; the reduction of common fractions to decimals; proportion, and the mensuration of surfaces and solids of the regular forms.

(6) In engineering, the candidate must be able to describe the types of marine engines and boilers and their attachments
131 now in common use; the manner of putting them in operation, and the precautions to be taken to guard against the derangements to which they are liable. He must show himself familiar with the uses, operation and construction of the various auxiliary machines now in use on board ships of war, such as air and circulating pumps, feed pumps, fire and bilge pumps, wrecking pumps, hydraulic pumps, forced-draft and ventilating blowers, dynamo engines, evaporators, distillers, ice machines, starting and turning engines, anchor engines, steering engines, boat and deck winches, launch machinery, ash hoists, etc. He must be familiar with the materials of which the different parts of machinery, steam pumps, particularly should be made, and he must be able to describe the repairs and remedies usually adopted on board ship in cases of derangement or breakage of parts of main and auxiliary machinery. He must be a practical steamfitter, and capable of making joints in high-pressure hydraulic piping. He must be familiar with the manner of taking indicator cards from steam engines, and must be able to interpret and work out such cards. He must be able to read drawings, make working sketches and lay out work.

(7) A series of questions covering the subjects above enumerated will be prepared and sent to all ships and naval stations of the United States where enlisted men, machinists by trade, are on duty, and where applicants from civil life will be examined. Using these questions and no others, written examinations of candidates shall be held under the supervision of an officer or officers designated for the

132 purpose by the senior officer present. All candidates in any ship or at any station shall be examined the same day and at the same time. Communication between candidates during examination shall not be allowed, and either giving or receiving assistance shall at once disqualify the offender as a candidate. The examination papers, together with testimonials and all other records in each case, shall be forwarded to the Navy Department, where the board provided shall mark the papers and grade the successful candidates in their order of merit as shown by the final averages. Examination of applicants from civil life will be held at the navy-yard or naval station nearest the candidate's home.

(8) Examination papers shall be marked on the basis of 1,000 as perfect. The following weights will be assigned to the different subjects:

| | |
|---|---|
| Naval record | 100 |
| Recommendation of commanding officers | 200 |
| Recommendation of engineer officers | 200 |
| Handwriting | 30 |
| Arithmetic | 70 |
| Marine engines | 100 |
| Marine boilers | 100 |
| Auxiliary machinery | 100 |
| Indicators and diagrams | 50 |
| Working sketches | 50 |
| | 1,000 |

Candidates with no naval record will be marked for record and recommendations upon the letters furnished by them, giving the weights as set forth above.

The next examination will be held September 1, 1905.

For any further information apply to the Bureau of Navigation Navy Department, Washington, D. C.

G. A. CONVERSE,
*Chief of Bureau.*

(Here follows application blank for admission to The George Washington University, marked page 133,) endorsed as follows:

——— ——, 190–.

I hereby register under the above application for the academic year 190–190–.

.....

(Sign here.)

# The George Washington University

DEPARTMENT OF ARTS AND SCIENCES

WASHINGTON COLLEGE OF ENGINEERING

CHECK LIST
Completed
Approved
Notice given
Treasurer passed
Registration perfected
Charged
Carded
Faculty notices given
No. 136

WASHINGTON, D. C. October 18th 1906

*To the President of The George Washington University:*

I hereby apply for admission to the Washington College of Engineering as a' Special Student
(Here state whether candidate for a degree, indicating the degree sought, or special student)'

Certificates of preparatory work are attached.

In Oct 14 of the year 1906 I was admitted to this University as a student in' Engineering
(Here state department)'

The degree of ..... was conferred upon me in ..... by .....

Advanced standing is desired in view of attached certificate from .....

During the academic year 190-----190---- I desire to enter upon the following courses:

| UNIVERSITY SUBJECT | COURSE No. | COURSE Hours | Endorsement |
|---|---|---|---|
| Applied Mathematics | | 4 | |
| Archæology | | | |
| Architecture | | | |
| Astronomy | | | |
| Botany | | | |
| Chemistry | | | |
| Civil Engineering | | | |
| Economics | | | |
| Electrical Engineering | | | |
| English | | | |
| French | | | |
| Geology and Mineralogy | | | |
| Germanic Languages and Literatures | | | |
| Graphics | 1 | 2 | |
| Greek | | | |
| History | | | |
| Italian | | | |
| Latin | | | |
| Mathematics | 2.4 | 4 | |
| Mechanical Engineering | | | |
| Philosophy | | | |
| Physics | | | |
| Political Science | | | |
| Semitic Languages and Literatures | | | |
| Sociology | | | |
| Spanish | | | |
| Zoölogy | | | |
| Law | | | |
| | | | |
| Medicine | | | |
| | | | |

Total Hours 4-6 hours Laboratory Courses .....

I belong to the white race, was born on the 23rd day of September in the year 1884

in' Philadelphia, Pa. (Here state place of birth)', and my home address is 1122 So 13th Street

Philadelphia, Pa. Mr. T. Shannon, above address
(Here state name and address of parent, next of kin, or guardian.)'

My Washington address is Water & O sts. S. W. U. S.

Puritan, U. S. Navy

I refer, by permission, to Miss John Doyle Carmody and S. M. Stratton
(Here give names and addresses of two references)'

Navy Dept who will certify to my good character.

My full name is M Thomas Louis Shannon

Oct 16 190 06

Registration under the above application is authorized and he is recommended for a

Powell Scholarship

College credit is granted for .....

Approved H. L. HODGKINS
(OVER) CHAS W. NEEDHAM *Dean*

133

Class F Degree Sp Dep't WCE
Surname Shannon
First name Thomas Louis
Matriculation fee 5
Library fee 5
Tuition fee Powell Sch 90
Materials

Deposit ✓ change add
Passed A T

# ADMISSION OF SPECIAL STUDENTS.

Persons of sufficient maturity may be admitted as special students, without examination, provided they give evidence of ability to do work creditably in the University.

Such students may graduate in any of the courses, on condition of passing all the examinations, including those for admission.

Special students are subject to the same regulations in regard to examinations and number of hours as other students.

Washington D.C.

October 18 1906

*To The President of the George Washington University*

I, the undersigned, respectfully apply for admission as a special student in the Department of Arts and Sciences and herewith submit the following answers to the questions in support of this application:

1. Have you ever registered in The Columbian University? No ...In any other university or college? Yes

2. Have you ever taken any entrance examination or offered any credentials for entrance to any regular course at The Columbian University? Yes

3. What will be your age on October 1 of the present year? 22

4. Are you a graduate of any high school or academy? Yes When? 1898 Where? Philada

5. School last attended? Franklin Inst. When? 1904

6. Have you ever taught? No When? ---- Where? ----------

7. Have you ever passed a civil service examination? ..... When? ..... For what position? .....

8. If admitted, in what subject or subjects do you intend to specialize? Mathematics

9. Give a detailed account of your educational qualifications.

Was a cadet in the Marine Engineering Dept. of William Cramps & Sons. Philad'a, Penna for a period of four (4) years and (5) months. Attended the Franklin Institute for (2) two years in machine design and high school graduate in 1898.

T. L. SHANNON

134 The George Washington University,
Washington, D. C.
Office of the Treasurer.

DECEMBER 29, 1906.

*Memorandum for Mr. Swett.*

The account card of T. L. Shannon, Engineering, shows no tuition charge. He holds a Powell Scholarship. Being a foundation scholarship, the fees should be charged. Kindly send a charge card with the proper amount on it.

Very truly yours,

CHAS. W. HOLMES.

(Here follows blank for "Admission of Special Students" in The George Washington University, marked page 135, and is endorsed as follows:)

[Endorsed:] The George Washington University, Washington, D. C. Department of Arts and Sciences. Admission of Special Students. [Name.] —— ——. [Write name in full.] [Address.] —— —— [Date.] ——.

136 John Doyle Carmody,
314 Ninth Street, N. W.,
Washington, D. C.

OCT. 11-1906.

Mr. Otis D. Swett, George Washington University, City.

MY DEAR MR. SWETT: This letter will be presented to you by Mr. Thomas Shannon U. S. N. in whose behalf I was talking to you this afternoon.

Anything you may do for him will be greatly appreciated by me.

Sincerely yours,

JOHN DOYLE CARMODY.

137 The Columbian University,
Washington, D. C.
Department of Arts and Sciences.

The President of the Columbian University:

I, the undersigned, respectfully apply for admission as a student to the Department of Arts and Sciences. I submit the following statement:

Name in full August R. F. Brandes.
Place and date of birth Bremerhaven, Germany.
Race Caucasian Legal residence Oakland Cal.
Washington address 311, Third Street N. E.

I refer by permission to the following persons who will certify to my good moral character:
Geo. M. Shaw, Esq., 969 Bdwy. Oakland, Cal.
A. J. Read, Oakland Engineer, Oakland, Cal.
(Signed) AUGUST R. F. BRANDES.

138 The George Washington University.
Washington, D. C.
Columbian College.
Office of the Dean.

Mr. Brandes presented seaman's papers issued at San Francisco under date December 20, 1898, containing among other things the following memoranda:
A. R. F. Brandes, mother's address—705 Brush Street, Oakland, Cal.
Birthplace—Germany.
Citizen of the United States.
Born June 17, 1874.
Height 6 ft.
Complexion Light.
Hair light.
Eyes blue.

Record of service on the sea:

San Francisco to Honolulu and return, Steward, January 1897. (Barque Albert.)
Two voyages to domestic ports.
San Francisco to Kahuliu, Carpenter and Able Seaman, October, 1898.
San Francisco to Kahuliu and return, Carpenter, August, 1898. (Barquentine Lurliu.)
Character and ability—Seamanship—"Very Good."

Columbian University.
Washington, D. C.
Corresponding Secretary of the University.

Mr. Brandes—Powell Sch.
1st year Algebra.
Geometry.
Trigonometry.
English.
2nd year Meteorology.
Navigation.
Nautical astrometry.

139 Application for University Studies.

WASHINGTON, D. C., *Sept.* 22, 1904.

President of the Columbian University:

I hereby make application for admission to the courses of study as specified below:

(Name) August R. F. Brandes,
(City Address) 311 3rd St. N. E.

| University subjec | Course. No. | Hours. | University subject. | Course. No | Hours. |
|---|---|---|---|---|---|
| Applied Mathematics. | | | History. | | |
| Archaeology. | | | Italian. | | |
| Architecture. | | | Latin. | | |
| Astronomy. | | | Library Science. | | |
| Botany. | | | Mathematics | 2.4.6 | 8 |
| Chemistry. | | | Mechanical Engineering. | | |
| Civil Engineering. | | | Meteorology. | | |
| Economics. | | | Philosophy. | | |
| Electrical Engineering. | | | Physics. | | |
| English | 2.4 | 3 | Political Science. | | |
| French. | | | Spanish. | | |
| Geology and Mineralogy. | | | Zoology. | | |
| German. | | | Law Courses. | | |
| Graphics. | | | Medical Courses. | | |
| Greek. | | | | | |

What year of your course do you now enter upon Special (Powell Scholarship).

How many hours per week? 11.

Approved:

H. L. HODGKINS, *Chairman.*

Approved:
CHAS. W. NEEDHAM.

140 O. E.

Registered, No. 240. File No. 130.

The George Washington University,
Department of Arts and Sciences,
Columbian College.

WASHINGTON, D. C., *Sept.* 18, 1905.

To the President of The George Washington University:

I hereby make application for admission to Columbian College for the academic year 190—190– as a student in the following courses:

| University subject. | Course No. | Hours. | Endorsement. |
|---|---|---|---|
| Applied Mathematics. | | | |
| Archaeology. | | | |
| Architecture. | | | |
| Astronomy. | | | |
| Astro-Physics. | | | |
| Botany. | | | |
| Chemistry. | 1 | 3 | |
| Civil Engineering. | | | |
| Economics. | | | |
| Electrical Engineering. | | | |
| English. | | | |
| French. | | | |
| Geology and Mineralogy. | | | |
| German. | | | |
| Greek. | | | |
| History. | | | |
| Italian. | | | |
| Latin. | | | |
| Mathematics. | 12 | 4 | |
| Mechanical Engineering. | | | |
| Meteorology. | | | |
| Philosophy. | | | |
| Physics. | 13 | 5 | |
| Political Science. | | | |
| Sociology. | | | |
| Zoology. | | | |
| Spanish. | | | |
| International. | | 1 | |
| Law Admiralty. | | 1½ | |
| Medicine. | | | |

*Registration Check List*

Not to be detached

| | |
|---|---|
| Application complete. | 2 |
| Approved by Dean. | 110 |
| Applicant notified Phy- | 10 |
| Registered. | |
| Recorded. | |
| Charged. | |
| Carded. | |
| File numbered. | |
| Approved by President. | |
| Applicant notified. | |
| Finished, file. | |

141 Total hours, 10½. Laboratory Courses Phys. 3.

Legal residence: State Cal. City of Oakland; Washington address Gov't Printing Office.

Name and address of Parent or Guardian Mrs. Johanna Brandes, 1405 17th St., Oakland, Cal.

Race; Caucasian; Age on October 1st, 190-, 31 years 3½ months; Entering on second year of attendance as a Special student "Admiral Powell Scholarship."

Approved.

WM. H. WILBUR.

Have previously been registered in the University as follows: 1904-05 English Math.

Mr. BRANDES.

A. RUDOLF FERDINAND

Approved Oct. 13, 1905.

WM. A. WILBUR, *Dean.*

Approved Oct. 14, 1905.

CHAS. W. NEEDHAM.

Registration under the above application for the academic year 1905-1906.

AUGUST R. F. BRANDES

142 EXHIBIT J. A. S. No. 2.

Navy Department, Washington, D. C.

This is to certify that G. A. Converse is the Chief of the Bureau of Navigation and the proper authority to furnish information as to those who have entered the Naval Academy, and that C. W. Rae is the Chief of the Bureau of Steam Engineering, and is the proper authority to furnish information as to those appointed to the Steam Engineering Department of the United States Navy from civil life.

Given under my hand and the seal of the department this 23d day of March, 1907.

[SEAL.] TRUMAN H. NEWBERRY,
*Acting Secretary of the Navy.*

143 BUREAU OF STEAM ENGINEERING,
NAVY DEPARTMENT,
WASHINGTON, D. C., *Mar.* 14, 1907.

J. K. M. Norton, Alexandria, Virginia.

DEAR SIR: You are informed that of the names included in the list hereto attached the record of this Bureau shows that none of them have ever received appointment from civil life to the Steam Engineering Department of the United States Navy.

Very truly yours,

C. W. RAE,
*Engineer-in-Chief, U. S. N., Chief of Bureau.*



OOR COPY

144 LD-WGC.

Address Bureau of Navigation, Navy Department, and Refer to No. 5165-79.
LD.

DEPARTMENT OF THE NAVY,
BUREAU OF NAVIGATION,
*March* 14, 1907.

DEAR SIR: Replying to your letter of February 21st, addressed to the Secretary of the Navy, which has been referred to this Bureau:

You are informed that the records of the Bureau show that of the names included in the list forwarded with your letter, but two have entered the Naval Academy, namely, F. V. McNair, Jr., and Ralph E. Sampson.

It appears on inquiry at the Bureau of Steam Engineering that no one mentioned in the list has ever received appointment from civil life in the Steam Engineering Department of the United States Navy.

For information in regard to the Merchant Marine Service of the United States, it is suggested that you apply to the Department of Commerce and Labor.

Very respectfully,

G. A. CONVERSE,
*Chief of Bureau.*

Mr. J. K. M. Norton, Attorney at Law, 126-130 S. Fairfax St., Alexandria, Virginia.

145 In the Supreme Court of the District of Columbia.

Equity. No. 24288.

BROOKE P. TAYLOR and Others, Complainants,
against
THE COLUMBIAN UNIVERSITY and Another, Defendants.

I, Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, hereby certify that the United States of America has no real interest in the questions being litigated in the above entitled cause or the matters in controversy therein.

Witness my hand and the seal of the said Court this 20th day of February A. D. 1907.

HARRY M. CLABAUGH,
*Chief Justice.*

Attest:

[SEAL.] JOHN R. YOUNG,
*Clerk of the Supreme Court of the District of Columbia.*

146 *Depositions on Behalf of Defendant.*

Filed Jan. 21, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 24288.

BROOKE P. TAYLOR
vs.
THE COLUMBIAN UNIVERSITY et al.

WASHINGTON, D. C., *January* 17, 1908—2 o'clock p. m.

Met pursuant to notice, at the office of W. C. Clephane, Esq., Fendall Building.

Present on behalf of the complainant, Mr. Norton.

Present on behalf of the defendants, Mr. Clephane.

Mr. Clephane, Counsel for defendants offered in evidence a copy of Chapter 379 of the Acts of the Maryland Legislature, of 1867, providing for the incorporation of universities, together with the certificate of incorporation of the Johns Hopkins University; and it is admitted by counsel that these are correct copies of the originals, the due certification of these copies being waived.

Counsel for the defendant also offers in evidence the record in case No. 23,274, upon the Equity side of the Supreme Court of the District of Columbia; and thereupon rests his case.

The papers referred to are filed herewith, marked, respectively, Defendant's Exhibit A and Defendant's Exhibit B.

147 DEFENDANT'S EXHIBIT A.

*Certificate of Incorporation.*

Know all men by these Presents, that we, Thomas M. Smith, William Hopkins, Lewis N. Hopkins, John W. Garrett, Alan P. Smith, John Fonerden, George W. Dobbin, George M. Gill, Andrew Sterett Ridgely, Thomas Donaldson, James A. L. McClure and Charles J. M. Gwinn being citizens of the United States of America, and of the State of Maryland, and being desirous to form a corporation for the purpose of organizing an "University," for the promotion of education in the State of Maryland, do hereby declare and certify that we do, by this instrument of writing, and by virtue of and under the provisions of an Act of the General Assembly of Maryland, passed at the January session thereof in the year eighteen hundred and sixty seven, and being the act of eighteen hundred and sixty seven, chapter three hundred and seventy nine, form a corporation, under the name of the "Johns Hopkins University" for the promotion of education in the State of Maryland, which shall be governed and controlled by twelve Trustees,

who shall manage the concerns thereof, and which said twelve trustees shall be Francis T. King, Lewis N. Hopkins, Thomas M. Smith, William Hopkins, John Fonerden, John W. Garrett, Francis White, Charles J. M. Gwinn, Galloway Cheston, George W. Dobbin, Reverdy Johnson, junior, and George Williams Brown, and which said University shall be located in Baltimore County, in the State of Maryland.

Witness our hands and seals, set hereto on this twenty fourth day of August, in the year eighteen hundred and
148 sixty seven.

| | |
|---|---|
| THOMAS M. SMITH. | [SEAL.] |
| WILLIAM HOPKINS. | [SEAL.] |
| LEWIS N. HOPKINS. | [SEAL.] |
| JOHN W. GARRETT. | [SEAL.] |
| ALAN P. SMITH. | [SEAL.] |
| JOHN FONERDEN. | [SEAL.] |
| GEORGE W. DOBBIN. | [SEAL.] |
| GEORGE M. GILL. | [SEAL.] |
| ANDREW STERETT RIDGELY. | [SEAL.] |
| TH. DONALDSON. | [SEAL.] |
| JAMES A. L. McCLURE. | [SEAL.] |
| CHARLES J. M. GWINN. | [SEAL.] |

Witness:
ALLEN E. FORRESTER.

STATE OF MARYLAND,
*Baltimore City, To wit.*

I, hereby certify that on this twenty fourth day of August, in the year eighteen hundred and sixty seven, before me, a Justice of the Peace of the State of Maryland, in and for the city of Baltimore aforesaid, and being an officer competent to take the acknowledgement of deeds, personally appeared Thomas M. Smith, William Hopkins, Lewis N. Hopkins, John W. Garrett, Alan P. Smith, John Fonerden, George W. Dobbin, George M. Gill, Andrew Sterett Ridgely, Thomas Donaldson, James A. L. McClure and Charles J. M. Gwinn, and did severally acknowledge the foregoing certificate, or instrument of writing to be their respective act and deed.

ALLEN E. FORRESTER.

149 DEFENDANT'S EXHIBIT B.

Acts of 1867, Chapter 379, Passed March 2nd, 1867.

SECTION I. Be it enacted by the General Assembly of Maryland, That any twelve or more white persons, citizens of the United States and a majority of them citizens of Maryland, who may desire to form a corporation for the purpose of organizing any University, College or Hospital, or any asylum for charitable purposes, may make, sign and acknowledge, before some officer competent to take

the acknowledgment of deeds, a certificate in writing, in which shall be stated the corporate name of the University, College, Hospital or asylum, and the number of the trustees, directors or managers, who shall manage the concerns of the said University, College, Hospital or asylum, and the name or names of the city of county or counties in which said university, college, hospital or asylum, or any branch or branches thereof may be intended to be located.

SECTION II. And be it enacted, That the said certificate shall be recorded in the office for the recording of deeds of the city or county, or the city and county, or counties, in which the said university &c. or any branch thereof, may be intended to be located, and when the said certificate shall have been so recorded, the persons who have signed and acknowledged the same, and their successors, shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name shall have succession.

SECTION III. And be it enacted that they shall by their corporate name be capable in law of receiving and acquiring by grant, devise or bequest any real or personal property which may be granted, devised, or bequeathed to said corporation for the promotion of the purposes for which it was formed, and shall hold, use and dispose of the said property, real or personal, according to the terms of the grant, devise or bequest, by which the said property, real or personal, was vested in said corporation.

SECTION IV. And be it enacted, That every such corporation so formed shall be capable in law of purchasing, holding and conveying any real or personal estate whatsoever, which may be necessary to enable said corporation to carry on the operations named in such certificate.

SECTION V. And be it enacted, That every such corporation, so formed may make such rules and regulations, consistent with the constitution and laws of this State and of the United States as it may see fit to prescribe for its own organization and government, and may change the same, from time to time, as it may deem proper and expedient: and the trustees, directors or managers, who shall be named in the said certificate, shall supply by election the place or places among the said trustees, directors or managers which may become vacant by death, resignation or otherwise, in their own body, so that the number of twelve shall always be preserved.

SECTION VI. And be it enacted That this Act shall take effect from the date of its passage.

POOR COPY

151 *Opinion of Court.*

Filed Sep. 22, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 24288.

BROOKE P. TAYLOR et al., Plaintiffs,
vs.
THE COLUMBIAN UNIVERSITY et al., Defendants.

The plaintiffs in this case allege that they are the heirs at law of Levin M. Powell, late an admiral on the retired list of the United States Navy, and seek to avoid a trust created by his will in favor of the defendants, Columbian University (now George Washington University), and Johns Hopkins University, both incorporated bodies, and to have an account of the rents and profits of the real estate which is the subject of such trust. A demurrer to the bill was overruled by another justice of this court, and from his decree a special appeal was allowed and upon its hearing, his decision was sustained. The case is reported in 25 App. D. C. 124, to which reference is made for a full statement of the allegations of the bill, which includes the item of the will of Admiral Powell creating the trust in controversy.

In sustaining the ruling of this Court, the Court of Appeals in its opinion decided two important questions raised by the bill. It held, first, that portion of the will providing for the free education
152 of young men in order to fit them for admission to the Naval Academy of the United States and making a devise therefor in trust to an incorporated institution of learning, created a special charitable trust and second that the trust so created was not void for uncertainty or incapacity of execution apparent upon its face. The Court further held that if plaintiffs had a right of action at all it must fall under the ninth paragraph of the bill which alleges that after efforts made to carry out the intention of the testator the incapacity of the execution of the trust has been demonstrated. Accordingly, upon the coming down of the mandate of the Court of Appeals, the defendants filed answers, and testimony was taken upon this point.

First. From the testimony adduced by plaintiffs upon this point, it appears that beginning with the Scholastic year 1887-8 (the Will of Powell was probated in 1885) the defendant "Columbian University" published in its annual catalogues that under the terms of the "Admiral Powell Endowment" free scholarships would be given to a limited number of pupils who were preparing for admission to the United States Naval Academy at Annapolis. This notice was in some issues of the catalogue more explicit, giving in general terms the terms of the trust, and in other issues courses of study were

given from which the special course contemplated by the terms of the trust might be selected. It further appears from the records of the University that beginning with the scholastic year 1891-2 twenty-four young men actually took a course of study under the Powell Scholarships, in some cases the same man being permitted to pursue the course for more than one year. Of this number
153 at least two entered the Naval Academy. I find nothing in the evidence showing the net income derived by the University from the trust property, but there is nothing to show that the full net income thereof was not applied to the administration of the trust. I am of the opinion that the evidence adduced is not sufficient to demonstrate the "incapacity" of the execution of the trust.

Second. But even if this testimony was sufficient to demonstrate the "incapacity" of the execution of the trust by the Columbian University, still I fail to see how on this record the court could grant the relief prayed for. In its answer, the Johns Hopkins University avers that it is able, ready and willing to accept said property under said devise and to carry out the trusts thereof and the intention of said testator expressed therein, at any time, when for any reason it may be entitled or called upon to do so." In the provision of his will in controversy, the testator used this language: "and should it (Columbian University) at any time for any reason be impossible to carry into effect the trusts, provisions, and conditions having relation to and herein imposed upon this bequest by me made for the creation of the endowment described on the part of the said Columbian University, or should it be made manifest at any time that the said trust is not being administered in accordance with my wishes and desires, and in conformity with the conditions specified, then, and in such case it is my will and desire that the said endowment shall be placed in other hands, and to that end, and upon the happening of the contingency mentioned, I do hereby give, devise, and bequeath the said property to the Johns
154 Hopkins University of Baltimore, in the state of Maryland, and its successors, to be taken and held by the said University or the officers thereof proper for that purpose, upon the trusts and for the purposes hereinafter set forth in the bequest of said property to the Columbian University, in such manner that the purposes of the said endowment as by me indicated may be fully carried into effect."

The Court of Appeals has held that the trust is not void for uncertainty or incapacity of execution upon its face. Assuming that the Columbian University has not, or cannot carry out its terms and provisions, *non constat* that the Johns Hopkins University may not be able so to do. And until the latter has tried and failed the court could certainly not be justified in frustrating the intention of the testator by bestowing the trust property upon these plaintiffs, related so remotely to him.

For these reasons, a decree will be signed dismissing the bill.

ASHLEY M. GOULD,
*Associate Justice.*

155 *Decree Dismissing Bill.*

Filed Oct. 12, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

No. 24288. In Equity.

BROOKE P. TAYLOR et al.
vs.
THE COLUMBIAN UNIVERSITY et al.

This cause came on to be heard and was argued by counsel and thereupon, upon consideration thereof, it is, this 12th day of October, 1909, adjudged, ordered and decreed that the bill of complaint filed herein be and the same is hereby dismissed with costs, and that the defendants have execution therefor as at law.

ASHLEY M. GOULD,
*Justice.*

And from this decree the complainants in open court pray an appeal to the Court of Appeals of the District of Columbia, which appeal is allowed, and the penalty of the appeal bond is hereby fixed at $100, with the privilege to the said defendants of depositing $50 with the Clerk of the Court in lieu of such bond.

ASHLEY M. GOULD,
*Justice.*

156 *Memorandum.*

October 29, 1909.—Appeal bond filed.

*Directions to Clerk for Preparation of Transcript of Record.*

Filed Nov. 17, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 24288.

BROOKE P. TAYLOR and Others, Complainants,
against
THE COLUMBIAN UNIVERSITY and Another, Defendants.

The Clerk will please transcribe as and for the record on appeal of the complainants in the above entitled cause the following:

1. Original bill;
2. Answer of George Washington University;
3. Answer of Johns Hopkins University;
4. Complainants' testimony;

5. Defendants' testimony;
6. Opinion of the Court, Gould J.;
7. Decree dismissing bill;
8. This designation.

J. K. M. NORTON,
HENRY E. DAVIS,
*Attorneys for Complainants.*

157 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss.*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 156, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in Equity Cause No. 24288, wherein Brooke P. Taylor, et al. are Complainants and The "Columbian University", &c., et als. are Defendants, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of December A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2098. Brooke P. Taylor et al., appellants, vs. Columbian University et al. Court of Appeals, District of Columbia. Filed Dec. 15, 1909. Henry W. Hodges, clerk.

WEDNESDAY, *March 2d, A. D.* 1910.

No. 2098.

BROOKE P. TAYLOR, NANNIE M. MCCORMICK, ROSALIE MCCORMICK et al., Appellants,
vs.
COLUMBIAN UNIVERSITY (Now Known in Law as GEORGE WASHINGTON University) and Johns Hopkins University, Each a Corporation.

The above entitled cause was submitted to the consideration of the Court on the printed record and briefs filed herein by Messrs. Henry E. Davis and J. K. M. Norton, attorneys for the appellants, and by Messrs. Wm. F. Mattingly and W. C. Clephane, attorneys for the appellees.

In the Court of Appeals of the District of Columbia.

No. 2098.

BROOKE P. TAYLOR et al., Appellants,
vs.
COLUMBIAN UNIVERSITY and JOHNS HOPKINS UNIVERSITY.

*Opinion.*

(Mr. Chief Justice SHEPARD delivered the opinion of the Court.)

This is an appeal from a decree dismissing a bill filed by appellants, as heirs at law of the late Admiral Levin M. Powell, to declare void a trust created by his will and to recover certain real estate held thereunder by the George Washington University, the legal successor of the Columbian University.

The fifth item of the will which creates said trust reads as follows:

Item: Fifth, it being my wish and desire to make some contribution to the Navy of the United States of which I have been for so many years, I hope, a worthy member, and so in a measure to pay off the debt I feel I owe the honorable profession I have pursued through a long lifetime, and to that end to establish in the Columbian University in the District of Columbia, in a manner most conducive for that purpose a means for the education of such young men as may be willing to profit therefrom in the branches of education best fitted to prepare them for officers of the line in the navy of the United States or for the places of mates or captains in the Marine Service of the United States. I do hereby give, devise and bequeath to the said Columbian University and its successors all those certain pieces or parcels of ground situated and lying in said City of Washington, and known and distinguished on the plats of said City as lot lettered C and the east five feet from front

to rear of lot D, of Samuel D. King's sub-division of lots numbered one (1), two (2), and three (3), thirty two and thirty three (33) in square numbered one hundred and twenty six (126) duly recorded in the Surveyor's Office of said City, beginning for the said parcels at a point on I Street north, distance seventy-eight (78) feet west from the corner of I and 17th Street, and running thence north parallel with 17th Street one hundred and five feet to a fifteen foot alley; thence west with said alley thirty-five (35) feet; thence south one hundred and five (105) feet to the north line of said I street; thence east with said I street, thirty five (35) feet to the point of beginning, together with all and singular the improvements, rights, privileges and appurtenances to the same belonging, in trust for the purposes following, and for no other purposes whatever—that is, in trust to create an endowment to be known as the Admiral Powell endowment, and with that view to take the said property, and the same to rent from year to year or to lease for a term of years as to the trustees and overseers of said University shall seem best; and the rents, issues, and profits arising therefrom, after first paying out of the same the taxes, insurance, repairs, and other expenses, to devote as far as the same will go, under such regulations as to the said trustees and overseers may seem best, to the free education of such young men that may desire to take advantage of the said endowment by way of their preparation for entrance into the Naval Academy at Annapolis, Md., or such as may fit them to become mates and masters in the Merchant Marine Service of the United States, such preparation should be confined in the case of each young man so embracing the advantages of the said endowment to one year, and to include principally the studies following—that is to say, arithmetic, geometry, trigonometry, and astronomy, with the use of astronomical instruments, the construction of charts, and the application of this knowledge to hydrographical survey by latitude and longitude, and if possible such study as will give to such young men a knowledge of scientific voyages of discovery, and other matters relating to war and commerce on the high seas and it is further my desire that this endowment shall if possible, embrace in its benefits such apprentices as having filled their time in the great manufactory establishments of the country may apply for appointment from civil life in the steam engineer department of the United States Navy, to such I would like to have a year's education afforded under such regulations as the President and Faculty of the University may think proper. And should it any time for any reason be impossible to carry into effect the trusts provisions, and conditions having relation to and herein imposed upon this bequest by me made for the creation of the endowment described on the part of said Columbian University, or should it be made manifest at any time that the said trust is not being administered in accordance with my wishes and desires, and in conformity with the conditions specified then and in such case it is my will and desire that the said endowment shall be placed in other hands, and to that end and on behalf of the contingency mentioned, I do hereby give, devise and bequeath the said property to the Johns Hopkins Univer-

sity of Baltimore, in the State of Maryland, and its successors, to be taken and held by the said University or the officers thereof proper for that purpose, upon the trust and for the purposes hereinbefore particularly set forth in the bequest of said property to the Columbian University, in such a manner that the purposes of the said endowment as by me indicated may be fully carried into effect."

The case has been before us on a special appeal allowed from an order overruling a demurrer to the bill. Columbian University vs. Taylor 25 App. D. C. 124. It was then held that the trust was not void for uncertainty or incapacity of execution apparent upon its face. It was also said: "If there be a right of action at all it must fall under the ninth paragraph of the bill, which alleges that after efforts made to carry out the intention of the testator the incapacity of the execution of the trust has been demonstrated. The trust created by the will is not a general charitable trust, but is expressly limited to the purposes specified and no other. If the trust has failed of its object by reason of the facts alleged, and thereby come to an end, a resulting trust at once arose in favor of the heirs at law of the testator, enforceable by this proceeding in equity. Hopkins vs. Grimshaw, 165 U. S. 342-353."

The ninth paragraph of the bill referred to reads as follows:—

"That said defendant the Columbian University, issues and has for more than sixteen years issued a catalogue, publishing its classes, the names of all its students, its instructors and officers, and the many and various schools of education it maintains, that this catalogue is widely circulated throughout the United States, that among other things it has from time to time, during the past sixteen years, advertised "The Powell Scholarship," that such advertisement was contained in the said catalogue for the scholastic years 1900 and 1901, as will more particularly appear by reference to pages 94 and 95 of said catalogue, which is hereafter filed as Exhibit No. 3, and which it is prayed may be taken and considered as a part hereof. That substantially the same adverstisement had been inserted in said catalogue issued from time to time for the past sixteen years.

That notwithstanding the said wide circulation of said advertisement the said defendants, complainants are informed, believe and therefore charge, has been wholly unable to execute said trust."

The following paragraph supplements the ninth:—

"That the complainants are advised and therefore charge and allege that said device is so indefinite and the trust intended to have been created thereunder so uncertain as to its objects and subjects that it was impossible of execution by said defendant, the "Columbian University," or by the said defendant, the "Johns Hopkins University," had in no wise been executed by either of them in any respect whatsoever, and that it is now and ever will be impossible of execution by either of them."

The George Washington University, which is the Columbian University under a change of name authorized by law, thereafter answered the bill, alleging that it had entered upon the execution of the trust, by maintaining an equipment and faculty for teaching

the subjects embraced in the trust, and that it is, and has been teaching the same, and providing free scholarships therefor.

The Johns Hopkins University also answered, alleging upon information and belief that its co-defendant was executing the trust, and further alleging that it is "able, ready, and willing to accept said property under said devise and to carry out the trusts thereof, and the intention of said testator as expressed therein, at any time, when for any reason it may be entitled or called upon to do so."

It appears from the testimony that beginning with the year after the probate of the will in A. D. 1885, the Columbian University published in its catalogue that under the Admiral Powell Endowment free scholarships would be given to a limited number of pupils who would prepare for admission to the United States Naval Academy. Subsequent catalogues, from year to year, set out the terms of the trust in greater detail, and set out the courses of instruction indicated in the trust. It was shown that between 1891 and the date of taking testimony twenty four youths had been admitted to free scholarships under said endowment, some of these continuing for more than one term. At least two of these passed into the Naval Academy.

While this testimony does not show with certainty that the expectations of the testator have been fully answered, and is particularly defective in that it fails to show that the entire net proceeds of the trust property have been devoted exclusively to the purposes of the trust, and none other, it seems to be sufficient to show that the trust can be executed, as well as that, in some measure it is being executed. Whether the trust could be better performed is not the question; nor would it avail the appellants if it were not being performed at all by the first taker, for the trust cannot result to them in such event. In case of the failure of the first taker, the trust passes to the Johns Hopkins University, whose answer, as we have seen, states its willingness, readiness and ability to accept and execute the trust whenever it may be entitled or called upon to do so. There is no testimony tending to contradict this averment of the answer, and it must be taken as true. It has been contended by the appellee, in support of the decree, that the evidence shows that only a part of the heirs of the testator have joined in the bill. This involves a tedious examination of a family history extending back through several generations, that we think it unnecessary to enter upon, in view of the conclusions before stated.

In our opinion, there was no error in dismissing the bill, and the decree is affirmed with costs.

Affirmed.

TUESDAY, *April 5th, A. D.* 1910.

No. 2098. April Term, 1910.

BROOKE P. TAYLOR, NANNIE M. MCCORMICK, ROSALIE MCCORMICK et al., Appellants,
vs.
COLUMBIAN UNIVERSITY (Now Known in Law as GEORGE WASHINGTON University) and Johns Hopkins University, Each a Corporation.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per MR. CHIEF JUSTICE SHEPARD.
April 5, 1910.

MONDAY, *April 11th, A. D.* 1910.

No. 2098.

BROOKE P. TAYLOR, NANNIE M. MCCORMICK, ROSALIE MCCORMICK et al., Appellants,
vs.
COLUMBIAN UNIVERSITY (Now Known in Law as GEORGE WASHINGTON University) and Johns Hopkins University, Each a Corporation.

On motion of Mr. J. K. M. Norton, of counsel for the appellants in the above entitled cause, It is ordered by the Court that said appellants be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars.

*(Bond on Appeal.)*

Know all Men by these Presents, That we, Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick and others, as principals, and —— ——, as surety, are held and firmly bound unto George Washington University and Johns Hopkins University, both corporations in the full and just sum of Three Hundred dollars, to be paid to the said George Washington University and Johns Hopkins University, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eleventh day of April, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick, and others, appellants and Columbian University (now known in law as George Washington University) and Johns Hopkins University, each a corporation, appellees, a decree was rendered against the said Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick, and others and the said Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick, and others (embracing all who were appellants) having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said George Washington University and Johns Hopkins University citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick, and others shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

BROOKE P. TAYLOR, [SEAL.]
NANNIE M. McCORMICK, [SEAL.]
ROSALIE McCORMICK, [SEAL.]
All by J. K. M. NORTON, [SEAL.]
*Attorney in Fact and of Record.*
THE EMPIRE STATE SURETY CO.,
By HENRY J. HUNT, 3RD,
*Att'y in Fact.*

[Seal of the Empire State Surety Company.]

Sealed and delivered in presence of—
HENRY W. HODGES.

Approved by—
SETH SHEPARD,
*Chief Justice Court of Appeals*
*of the District of Columbia.*

[Endorsed:] No. 2098. Brooke P. Taylor, Nannie McCormick, Rosalie McCormick, et al., Appellants, vs. Columbian University (now known in law as George Washington University) and Johns Hopkins University, each a corporation. Bond on appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Apr. 13, 1910. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Columbian University (now known in law as George Washington University) and Johns Hopkins University, each a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick, et al. are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 13th day of April, in the year of our Lord one thousand nine hundred and *nine*.

SETH SHEPARD,
*Chief Justice of the Court of Appeals of the District of Columbia.*

Service accepted this 13th day of April A. D. 1910.
WM. F. MATTINGLY.
WALTER C. CLEPHANE.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 13, 1910. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 92 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick, et al., appellants, vs. Columbian University (now known in law as George Washington University) and Johns Hopkins University, each a corporation. No. 2098. April Term, 1910, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 14th day of April, A. D. 1910.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover: File No. 22,130. District of Columbia Court of Appeals. Term No. 522. Brooke P. Taylor, Nannie M. McCormick, Rosalie McCormick et al., appellants, vs. Columbian University (now known in law as George Washington University) and Johns Hopkins University. Filed April 29th, 1910. File No. 22,130.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 263.

BROOKE P. TAYLOR ET AL., APPELLANTS,

*vs.*

COLUMBIAN UNIVERSITY (NOW KNOWN IN LAW AS GEORGE WASHINGTON UNIVERSITY) ET AL.

**APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.**

## BRIEF ON BEHALF OF APPELLANTS.

### I.

### Statement of the Case.

This is an appeal from a decree of the Court of Appeals of the District of Columbia, sustaining the decree of the lower court dismissing the bill of complaint.

The bill was filed by appellants, complainants below, as heirs at law of Levin M. Powell, late Admiral, U. S. N., against the Columbian University and the Johns Hopkins University, and, after setting out a certain devise in Admiral Powell's will, alleged that the devise was so

indefinite, and the trust intended to have been created thereunder so uncertain as to its objects and subjects, that it was impossible of execution by the trustees, and had in nowise been executed by them; and that by reason of the indefiniteness of the purposes of the trust, and the hopeless uncertainty of the possible beneficiaries, the devise and the trust sought to have been created thereunder were wholly void. The bill also alleged that the Columbian University, the primary trustee, had been wholly unable to execute the trust.

The bill prayed that the devise be decreed void, and that the title to the property devised be declared to be in complainants.

The devise is as follows:

> "Item: Fifth: It being my wish and desire to make some contribution to the Navy of the United States of which I have been for so many years, I hope, a worthy member, and so in a measure to pay off the debt I feel I owe the honorable profession I have pursued through a long lifetime, and to that end to establish in the Columbian University in the District of Columbia, in a manner most conducive for that purpose *a means for the education of such young men as may be willing to profit therefrom in the branches of education best fitted to prepare them for officers of the line in the Navy of the United States, or for the places of mates or captains in the Merchant Marine Service of the United States*, I do hereby give, devise, and bequeath to the said Columbian University and its successors all those certain pieces or parcels of ground situate and lying in said City of Washington, . . . *in trust for the purposes following, and for no other purpose whatever* — that is, in trust to create an endowment to be known as the Admiral Powell endowment, and with that view to take the said property, and the same to rent from year

to year or to lease for a term of years as to the trustees and overseers of said University shall seem best; and the rents, issues, and profits arising therefrom, after first paying out of the same the taxes, insurance, repairs, and other expenses, to devote as far as the same will go, under such regulations as to the said trustees and overseers may seem best, *to the free education of such young men as may desire to take advantage of the said endowment by way of their preparation for entrance into the Naval Academy at Annapolis, Maryland, or such as may fit them to become mates or masters in the Merchant Marine Service of the United States, such preparation to be confined in the case of each young man so embracing the advantages of the said endowment to one year, and to include principally the studies following—that is to say, arithmetic, geometry, trigonometry, and astronomy, with the use of astronomical instruments, the construction of charts, and the application of this knowledge to hydrographical survey by latitude and longitude, and if possible such study as will give to such young men a knowledge of scientific voyages of discovery, and other matters relating to war and commerce on the high seas, and it is further my desire that this endowment shall, if possible, embrace in its benefits such apprentices as having filled their time in the great steam manufactory establishments of the country may apply for appointment from civil life in the steam engineer department of the United States Navy, to such I would like to have a year's education afforded under such regulations as the president and faculty of the university may think proper.* And should it at any time for any reason be impossible to carry into effect the trusts, provisions, and conditions having relation to and herein imposed upon this bequest by me made for the creation of the endowment described on the part of the said Columbian University, or should it be made manifest at any time that the said trust is not being

> administered in accordance with my wishes and desires, and in conformity with the conditions specified, then and in such case it is my will and desire that the said endowment shall be placed in other hands, and to that end and upon the happening of the contingency mentioned, I do hereby give, devise and bequeath the said property to the Johns Hopkins University of Baltimore, in the State of Maryland, and its successors, to be taken and held by the said University or the officers thereof proper for that purpose, upon the trusts and for the purposes hereinbefore particularly set forth in the bequest of said property to the Columbian University, in such manner that the purposes of the said endowment as by me indicated may be fully carried into effect" (Rec., pp. 5–6).

Admiral Powell died on January 15, 1885, and his will, making the above demise, was probated shortly thereafter.

Upon the filing of the bill, the defendants (appellees), demurred thereto, and their demurrer was overruled. On an appeal specially allowed the defendants from the decree overruling their demurrer, the Court of Appeals of the District of Columbia affirmed the said decree, in an opinion reported *sub nom.* Columbian University *vs.* Taylor, 25 App. D. C., 124. The defendants having thereafter answered, and testimony having been taken, the Supreme Court of the District of Columbia, by Gould J., dismissed the bill, the court filing a written opinion (Rec., pp. 78–9). This action of the court was affirmed by the Court of Appeals (35 App. D. C., 68), its opinion in this behalf being found in the record at pages 82–5.

From the action of the Court of Appeals in affirming the decree dismissing the bill this appeal was taken.

In its first opinion the Court of Appeals of the District of Columbia held that the devise in question created a special charitable trust; and that the trust is not void for uncertainty or incapacity of execution apparent upon its face; leaving for further determination the question whether the trust is in fact incapable of execution. In its second opinion that court held that the trust is not incapable of execution, and is, in fact, being in some measure executed. The language of the court on this point, which fairly summarizes the testimony, is as follows:

> "It appears from the testimony that, beginning with the year after the probate of the will in A. D. 1885, the Columbian University published in its catalogue that under the Admiral Powell Endowment free scholarships would be given to a limited number of pupils who would prepare for admission to the United States Naval Academy. Subsequent catalogues from year to year, set out the terms of the trust in greater detail, and set out the courses of instruction indicated in the trust. It was shown that between 1891 and the date of taking the testimony, twenty-four youths had been admitted to free scholarships under said endowment, some of these continuing for more than one term. At least two of these passed into the Naval Academy.
>
> "While this testimony does not show with certainty that the expectations of the testator have been fully answered, and is particularly defective in that it fails to show that the entire net proceeds of the trust property have been devoted exclusively to the purposes of the trust, and none other, it seems to be sufficient to show that the trust can be executed, as well as that, in some measure it is being executed. Whether the trust could be better performed is not the question; nor would it avail the appellants if it were not being performed at all by the first taker, for the trust can not result to them in such event. In case of the failure of the first taker, the trust

> passes to the Johns Hopkins University, whose answer, as we have seen, states its willingness, readiness, and ability to accept and execute the trust whenever it may be entitled or called upon to do so. There is no testimony tending to contradict this averment of the answer, and it must be taken as true."
>
> 25 App. D. C., 73–4; Rec., p. 85.

From both opinions, the view of the court below is seen to be that the trust is sustainable on the ground that it is a charitable trust and, therefore, valid, though if it had not been such a trust it would undoubtedly be void for uncertainty; and that being valid the only question open is whether it is capable of execution and has, in fact, been, or is being, executed.

## II.

### Assignments of Error.

The court below erred as follows:

1. In holding that the devise in question creates a charitable trust.

2. In holding that the said devise creates an educational trust.

3. In holding that the said devise and the trust thereby attempted to be created are not void for uncertainty.

4. In not holding that because of its declared object and the purpose of the testator the said trust is incapable of execution.

5. In not holding that the said trust, even if a charitable or educational trust, is too uncertain and indefinite to be capable of execution.

6. In holding that the said trust has been executed to any extent or in any manner.

7. In decreeing the dismissal of the bill of complaint.

8. In not granting the complainants the relief prayed in and by the bill of complaint.

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## III.

## ARGUMENT.

The points involved are three in number:

1. Does the devise create a charitable trust?

2. If so, is the trust, even though charitable, too uncertain and indefinite to be carried out as such?

3. Has the trustee been able to carry out the trust so as to accomplish the purpose of the testator?

### 1. Does the Devise Create a Charitable Trust?

(*a*) *Purpose of Testator.*

Admiral Powell made no gift for education. He made a gift for the Navy of the United States. It must be apparent that his purpose was not to aid any university, or any of its branches, nor to aid education: his sole purpose and object, as he expressly declared, was—

> "*to make some contribution to the Navy of the United States, of which I have been for so many years, I hope, a worthy member, and so in a measure to pay off the debt I feel I owe the honorable profession I have pursued through a long lifetime, and* TO THAT END *to establish . . . a* MEANS," etc.

The only test that can be applied to determine whether this is a charitable trust, is: Did the establishment of an endowment in the Columbian University, where students could receive certain instruction, carry

out the purpose expressed by Admiral Powell? In other words, did he thereby make any *contribution to the Navy of the United States?* His purpose is clear. Did what he provided should be done, carry out that purpose?

(*b*) *Prerequisites of Enforceable Charities.*

Two things are required to make charitable bequests susceptible of enforcement: First, the object of the testator must be clearly charitable; and, second, the thing he directs to be done, must, in its execution, accomplish the charitable object, in some degree at least. Here, as has been pointed out, the testator had no idea of assisting either of the universities named, or of assisting any one merely to get an education. His sole purpose, as he stated himself, was *"to make some contribution to the Navy of the United States."*

Suppose the testator had said that the teaching he pointed out was to be given only to young men who had lost one leg? We see at once that this would not have carried out his purpose, as he could not, in this way, have helped the Navy, as no such young men, after receiving the instruction, could enter the Navy. How does it help the Navy any more, or does it *make a contribution to the Navy*, to give one year's course of instruction to young men who might desire to enter the Navy?

The carrying out of the bequest, in the way designated, can not, in any way, help the Navy, which was the sole object of his bounty.

The Court of Appeals construed the bequest as a sort of educational trust, and so sustained it as a charity. In its opinion on the first appeal (25 App. D. C., 124), which is the basis for the decision now appealed from, the court said:

> "We are of opinion that the provision of the will providing for the free education of young

men in order to fit them for admission to the Naval Academy of the United States, and making a devise therefor in trust to an incorporated institution of learning, creates a special charitable trust."

Citing as authority for its view—

*Vidal* vs. *Girard*, 2 How., 127 et seq.
*Ould* vs. *Washington Hospital*, 95 U. S., 303.
*Spear* vs. *Whitney*, 24 App. D. C., 187.

The Girard bequest was for the establishment of an institution of learning for the education of as many poor white male orphans as the income would maintain.

In the Ould case the bequest was for the support of foundlings.

In the Spear case the bequests upheld were: One to maintain a scholarship in the study of medicine; the other was to be divided between two incorporated charitable institutions, namely, St. Vincent's and St. Joseph's Catholic Orphan Asylums, in the city of Washington.

In this case two other bequests were held void for uncertainty.

In each of these cases the intent was to create a charity, and the thing created was a charity. The Powell bequest was nothing like these cases, or any other decided case we have been able to find in which such an indefinite bequest was sustained.

The court fell into the error of supposing that Admiral Powell intended to aid in education of some sort. If this had been his purpose he would have created an endowment, the income therefrom to be used to give such free instruction as he might designate.

But, as we have seen, the testator had no such thought or intention, and expressly stated that his purpose was simply and solely "to make some contribution to the

Navy of the United States, . . . *and to that end,*" *etc.*

This precise statement by the testator of his purpose is the test, and the only test, by which to determine whether what he directed to be done did or could carry out his purpose, and whether the bequest was a charitable trust.

Courts can not make a will for a man, nor can they say that he intended anything different from what he declared he intended.

The Columbian University has covered the income from the bequest into its general funds, and has given free instruction in certain branches to certain young men that it chose to favor, without adding anything to its teaching staff; and, as an institution of learning, has been benefited by the gift; but can even the most vivid imagination point out wherein the Navy has been benefited?

And yet this was the sole purpose of Admiral Powell. It is not possible to read the bequest, and then to suppose for an instant that he ever intended to benefit the university as such, or any young man by way of education.

He says he did not intend any such thing. He says he intended, "*in a measure to pay off the debt I feel I owe the honorable profession,*" "*of which I have been for so many years, I hope, a worthy member,*" and says his bequest is because, "*of my wish and desire to make some contribution to the Navy of the United States,*" "*and to that end to establish in the Columbian University, etc.*"

Can his bequest, then, be used as it has been used, and as it can only be used, without any benefit to the Navy; and without in any way carrying out his declared purpose and intent?

Full and ample provision is made by the United States for appointment to the Navy and its various branches, and provision is made by the Government for the full and complete education and instruction deemed necessary, as well as for the only manner in which admission to the Navy can be had.

In no respect can the carrying out of the bequest of the testator, in any way, accomplish his declared purpose and intent of making a "contribution to the Navy of the United States," or, "paying the debt" he felt he owed the profession.

Not only does the bequest fail in the slightest way to accomplish the purpose the testator declared he had, but it is absolutely meaningless and futile in assisting persons who may receive the instruction in getting any of the places or positions indicated. Appointment to the Navy, or any of its different branches, depends upon arbitrary appointment: without such appointment the most highly educated youth in the land may not enter the service.

*The Bequest Does Not Come Under the Broadest Definition of Charitable Bequests.*

In *Words and Phrases*, Vol. 2, p. 1075, we find the broadest definition, derived from a great number of cases, as follows:

> "A 'charity,' in a legal sense, may be defined as a gift to be applied, consistently with existing law, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."

The testator intended none of these things. He intended, as he said himself, simply and solely to benefit the Navy, and what he did in no way carried out that intent.

*If It Does Not Appear from the Instrument that the Donor Intended a General Public Charity, It Will Not be Carried Out at All, if, by Reason of Its Uncertainty or Otherwise, It Can Not be so Carried Out as to Accomplish the Object Specified by the Donor.*

In *Kain* vs. *Gibboney*, 11 Otto (101 U. S.), 362 (1879), the bequest was to—

> "Richard V. Wheelan, Bishop of Wheeling, Ohio, or his successor in said dignity, . . . who is hereby constituted a trustee for the benefit of the community (previously described as a religious community attached to the Roman Catholic Church) of which I may die a member, the said property or money to be expended by the said trustee for the use and benefit of said community."

In deciding that this bequest was too uncertain to be carried out, Justice Strong, in delivering the opinion of the court, said:

> "But if it could be conceded that Wheelan was, in his lifetime, capable of taking the bequest, and that Bishop Kain is capable of taking and holding after the death of his predecessor, a greater difficulty is found in the uncertainty of the beneficiaries for whose use the trust was created. In the words of the will, they are a religious community, of which the testatrix contemplated she might die a member. She died a member of a religious community attached to the Roman Catholic Church, known as the 'Sisters of St. Joseph.' That is an unincorporated association, and it is the association as such, and not the individual

members who composed it when the testatrix died, which is declared to be the beneficiary. Nor is it the community attached to any local church which is designated, but a community attached to the Roman Catholic Church, wherever that church may exist. Its members must be constantly changing, and it must always be uncertain who may be its members at any given time. *No member can ever claim any individual benefit from the bequest, or assert that she is a cestui que trust; and the community, having no legal existence, can never have a standing in court to call the trustees to account.* This bequest is, therefore, plainly invalid, unless it can be supported as a charity. And it is far from evident that it is a gift for charitable uses. It looks more like private bounty. *Charity is generally defined as a gift for a public use. Such is its legal meaning. Here the beneficial interest is given to a religious community, but not declared to be for religious uses. There is nothing in the will to show that aid to the poor, or aid to learning, or aid to religion or to any humane object was intended.*"

In *Stratton* vs. *Physio. Med. Coll.*, 149 Mass., 505, 5 L. R. A., 33 (Mass., 1889), Justice Holmes, in delivering the opinion of the court in declining to order a *cy pres* scheme, said:

> "In the first place, it does not appear that the will creates a public charity. It does not purport to found an institution, as in Taintor *vs.* Clark, 5 Allen, 66; Atty. General *vs.* Lonsdale, 1 Sim., 105; Russell *vs.* Allen, 107 U. S., 163; but to give the fund to one already in existence, and having a determinate character. It would seem that Mr. Curtis' medical school in fact, and the supposed corporation in the mind of the testator, were neither of them free or public schools, as in Boxford Religious Soc. *vs.* Harriman, 125 Mass., 321, and Morville *vs.* Fowler, 144 Mass., 109 (see *McIntire* vs. *Zanesville*, 17 Ohio St., 352), but were

> both private pecuniary enterprises, to the support of which the trustees, that is to say, the party interested, had power to apply the whole income. Such an enterprise is not a public charity, even if indirectly it serves charitable ends. . . . *The favor shown to charities should not be carried to the point of overriding the plainly expressed limits of a gift.*"

Mr. Desty, in his note to this case, in 5 L. R. A., p. 35, says:

> "It is a general principle in the law of charities that, if charity be general, indefinite and of a mere private nature or not within the scope of the Statute of Elizabeth, it will be treated as void . . . (citing cases). *If it is clearly seen that the testator had but one particular object in his mind and that purpose can not be answered, the next of kin will take, there being in such case no general charitable intention*" (citing cases).

In *People* vs. *Powers*, 147 N. Y., 104 (35 L. R. A., 502, 1895), the court held that a trust to dispose of property among charitable and benevolent institutions or corporations in a city, as the trustees should choose, was unenforceable, because of the failure to designate the class or kind of beneficiaries to whom the distribution is practicable, or that could, with reasonable certainty, be identified, saying:

> "As we have seen, the trust is that Powers will dispose of the property among 'the charitable and benevolent institutions or corporations in the city of Rochester as he shall choose, and such sums and proportions as he shall deem proper.'"

Charity means one thing, benevolence quite another. Benevolence includes all acts or gifts prompted by good will or kind feelings, and may be entirely independent of any thought or intention of charity. The recipient or

beneficiary may be well to do and in no need of charity. In England, under the law of charitable uses, bequests for charity have been sustained; whilst benevolent gifts, without a designated beneficiary, have been held too indefinite, and therefore void.

Norris *vs.* Thompson, 19 N. J. Eq., 307.

Charity has obtained a significance in law, and courts do not uphold the administration of trusts for particular purposes which are not charitable within the meaning of the law.

Perry on Trusts, sec. 709.

*In re Randell*, 38 Ch. D., 213 (Eng., 1888), it was held that a bequest in trust "to pay the income to the incumbent of the church at H———, for the time being, so long as he permitted the sittings to be occupied free" did not indicate an intention to devote the bequest to general charity, and that, on failure to carry out the condition, the trust failed, and could not be carried out under *cy pres*.

The court said:

> "There is no general purpose of charity with respect to which a scheme could be made altering entirely the destination of the income of these investments. It seems to me startling to say that the charity commissioners might, if they pleased, make a new scheme for the application of this income in any way they pleased, possibly for the benefit of the incumbent and possibly not, and that when they have done that, although the very purpose for which the scheme is created, and for which the money is given, can no longer be carried into effect, yet the money is to be applied for a totally different purpose. . . . In the present case it seems to me that there is a definite, particular, special charitable bequest which must have effect given to it so long as it lasts and no longer; and that when

> it comes to an end there is no devotion to general charitable purposes at all, the intention of the testatrix being distinctly the opposite. On the construction of the will, it is a charity for a particular limited purpose, and nothing beyond that is declared; as soon as that particular purpose comes to an end, the fund which was subjected to that particular trust falls into the residue of the estate; and it would do so just as much if there was no such limitation as this in the will, as it does when the limitation exists."

*In re Prison Charities*, 16 Eq., 129 (Eng., 1873), certain charitable trusts, declared in favor of poor prisoners in the city of London, having lapsed by reason of the abolition of the law of imprisonment for debt, the Attorney-General, by his scheme, proposed that all the funds should be treated as one charity and applied to the establishment and maintenance of a school for children of persons convicted of crime; but the court held: (1) That in the bequest the words "Poor prisoners" really meant prisoners for debt, and in all cases, adults, and that there was no intention to relieve children, or to assist education; (2) that the *cy pres* scheme proposed did not approach sufficiently near to the charitable intentions of the donor; (3) that the proposed scheme would be unnecessary, as the object was already partially and better provided for by the Industrial Schools Act, and was inconsistent with charitable intention as tending to the relief of public rates and taxes, and was inexpedient, as it would result in the assembling together in one establishment of children suffering under a common misfortune, and thus perpetuating the memory of that misfortune.

Story, in his work on Equity Jurisdiction, section 1182, says:

> "All these doctrines proceed upon the same ground; that is, the duty of the court to effec-

tuate the general intention of the testator. And accordingly the application of them ceases whenever such general intention is not to be found. If, therefore, it is clearly seen that the testator had but one particular object in his mind, as, for example, to build a church at W———, and that purpose can not be answered, the next of kin will take, there being in such a case no general charitable intention."

*It is submitted that the devise in question, made for the definite purpose of helping the Navy or paying a debt to the marine profession, can in no way accomplish the sole purpose of the gift, and so must fail.*

**2. If the Devise be Held to be a Charitable Trust, it is Yet Too Uncertain and Indefinite to be Carried Out. Under the Devise it is Uncertain What Young Men Are to Partake of the Benefit; no Method Nor Plan for the Selection of the Beneficiaries is Prescribed or Provided.**

Of course, it must be borne in mind that bequests for the establishment of institutions of learning, as in *Vidal* vs. *Girard*, are entirely different from special bequests for specific purposes.

Our case is one of a bequest for a single and specific purpose, viz: To do something for the Navy; to pay a debt to it.

The beneficiaries are to be "such young men as may desire to take advantage of said endowment by way of their preparation, etc." What young men are to get the advantage? The number is unspecified and indefinite. Of the thousands who may "desire to take advantage of said endowment," who is to receive the benefit? Who is to select? No one. Under what plan is a selection to be made? None. What method is marked out for selection? None.

Suppose that ten or a hundred young men appeared and signified a desire to take advantage of this endowment, and the fund only justified granting it to four or five; which four or five would the university be justified in selecting, to the exclusion of the others?

Certainly the testator has given no one power arbitrarily to say to some of the applicants, "You shall receive the benefit," and to others, "You shall not receive the benefit," though both may be equally needy and equally worthy.

Where are the young men to come from? From the city of Washington? From any particular State? From any of the Territories or any of the Dependencies? The will is silent as to this.

It was held in *Norcross* vs. *Murphy*, *post*, that where no person is named to make the selection amongst the unnamed beneficiaries the gift can not be carried out.

The language of *Tilden* vs. *Green*, *post*, exactly applies to this case, even if we assume that the college had the power to select. In that case the court said:

> "As the selection of the objects of the trust was delegated absolutely to the trustees, there is no person or corporation who could demand any part of the estate or maintain an action to compel the trustees to execute the power in their favor. This is the fatal defect in the will. The will of the trustee is made controlling, and not the will of the testator."

It falls within the ruling of the cases cited, *post*, several of those being cases in which the uncertainty of the beneficiary and the absence of the power of selection are almost exactly like our case. But in our case the uncertainty is far greater than that in any of the cases cited, being, in fact, fourfold. The devise contemplates

the following classes of young men, namely (1), those who may desire to enter the Naval Academy at Annapolis; (2) those who may desire to become mates or masters of the Merchant Marine Service of the United States; and (3) those who may desire appointment from civil life in the Steam Engineer Department of the United States Navy; besides which, (4) what is the "Merchant Marine Service of the United States?"

Any young men, and any number of young men, from anywhere and everywhere, would have equal right to apply for education to fit them for entrance into the Naval Academy, or to become mates or masters in the Merchant Marine Service, or to enter the Steam Engineer Department of the Navy, as they might elect.

Suppose ten, a hundred—or thousands, for that matter, for quite a large proportion of the American youth would like to get into the Naval Academy—should apply for education "by way of their preparation for entrance into the Naval Academy;" and other young men, innumerable perhaps, should apply for such education "as may fit them to become mates or masters in the Merchant Marine Service," and still others, desirous of appointment in the Steam Engineer Department of the United States Navy, should wish the benefit of the endowment: who would be selected? Which class could the university select in preference to the other class, on the supposition that it had the power to select at all? If either class had such a right it would have to be such a right as could be enforced.

Neither class, and no one of either class, would have any such right. It would be impossible for a court of equity to enforce the benefit in favor of any class or individual of any class. No young men in the past, since the existence of the trust, ever had, and no young men in the future will ever have, the right to invoke a court of equity to compel the performance of the trust. No

manner or method is marked out by the testator as a guide for the selection.

There is no legal power to coerce the university into any particular selection. If it attempted to select, any applicant refused entrance would have the moral right, but not enforceable, to object to his exclusion, and could well insist that he had as much right to aid as the party selected; as the testator has given no rule or guide, the one refused would have an equal right with the one accepted for the benefit; the university could not select when the testator has provided no manner or method of selecting, nor could any one ever have any right to partake of the benefits of the bequest, such that he could call upon any court in the country to enforce, for it is impossible for any court to decide that one was entitled to the benefit over any other.

As respects the "Merchant Marine Service of the United States" there is no such thing known in law, wherefore the meaning of the testator in this behalf is left open to ascertainment outside of the testator's language and the provisions of his will: In other words, as in the case of *Tilden* v. *Green*, as respects this provision, the will of some one other than the testator is to be resorted to to give effect to this provision.

There has never been a bequest that more absolutely or perfectly fulfilled all the conditions of a void bequest than ours.

In *Norcross* vs. *Murphy*, 44 N. J. Eq., 522 (1888), the bequest was:

> "The residue of my estate to be kept in reserve for further consideration in the way of charitable purposes, in a liberal way, not to any particular creed or sect of religion."

The court held that the bequest was invalid on two grounds: (1) That it did not contain a gift of the fund;

(2) that if the fund was given the gift was void, as no beneficiary was indicated, nor any person appointed to select such beneficiary. In the preamble of the will the testatrix says:

> "I have lived an honest, true and useful life, to my family and friends; most of my time has been spent in administering truly, freely and virtuously for their benefit and comfort, etc."

About this language the court said:

> "What more natural than that the same simple ingenuousness that led to this self-protrayal would, likewise, induce the testatrix, when dealing with the residue of her estate, to divulge the thought that she not only contemplated devoting it to charitable purposes, but that she would do so without a shade of bigotry?"

In support of the second ground above, the court said:

> "In the present will, if there be a gift, it is 'in the way of charitable purposes in a liberal way,' and therefore, unless we can say that some person has been indicated to make selection of the unnamed beneficiaries, the gift can not be put into effect. . . . It is not possible to hold that, as no trustee is designated for the purpose, therefore it is to be presumed that the executors were intended to act in that respect, for such a principle of construction would, in effect, be a revocation of the rule that, in cases of general bequests of this character, a trustee must be indicated, for such juncture is always present when such gifts exist in a testamentary form."

In *Tilden* vs. *Green*, 130 N. Y., 29, the court, in construing Mr. Tilden's will, said:

> "As the selection of the objects of the trust was delegated absolutely to the trustees, there is no person or corporation who could demand any

part of the estate or maintain an action to compel the trustees to execute the power in their favor. This is the fatal defect in the will. The will of the trustee is made controlling, and not the will of the testator."

Mr. Desty, in his note to the case reported in 5 L. R. A., 33 (*Stratton* vs. *Physio. Med. College*), says:

"If the charity is general and indefinite and no plan or scheme is prescribed, and no discretion is given to select the beneficiaries, it does not admit of judicial administration. The will should prescribe some mode of selection, or give some person discretionary power to select."

Fairfield *vs.* Lawson, 50 Conn., 501, 513.
Beardsley *vs.* Bridgeport, 53 Conn., 489.
Hughes *vs.* Daly, 49 Conn., 34.
White *vs.* Fisk, 22 Conn., 30, 53.
Grimes *vs.* Harmon, 35 Ind., 198.
Church *vs.* Mott, 7 Paige, 77.
Norcross *vs.* Murphy, 44 N. J. Eq., 522 (1888).
Goodell *vs.* Union Asso., 29 N. J. Eq., 32 (1878).

In *White* vs. *Fisk*, 22 Conn., 30 (1852), the bequest was "to be expended by my said trustee for the support of indigent pious young men, preparing for the ministry in New Haven." This was held to be too indefinite to be sustained. The court said that it was impossible to tell what young men were entitled, and no power has been given to the trustees to select, that no one could tell who were the indigent young men or pious young men who were entitled to claim the benefit.

In *Hughes* vs. *Daly*, 49 Conn., 34 (1881), the court held that a bequest to G, "for the Catholic Reformatory for Boys in the State of Connecticut" was void for uncertainty, the word "Reformatory" being too wide and

uncertain a signification to be carried out; that the testator had not conferred upon any one the power to declare the precise purpose of the organization, or to select the boys who were to become its inmates, and that the court could not supply the omission. It was further held that a bequest to the most deserving poor of the town of New Britain could not be carried out as a charity, because the testator had failed to clothe any person with the power to designate the beneficiaries, and had furnished no standard by which to measure the merits of the claimants.

In *Fairfield* vs. *Lawson*, 50 Conn., 501, the bequest was to a trustee, the income to be devoted to the education of the freed men, and paid over annually to the proper officers of the Freed Men's Association for that purpose. The court held the bequest to be void, because the freed men were several millions in number, and no power was given to the trustee, or to any one, to select the individuals who should receive the benefit, and that every individual, therefore, would have a right to share in the bounty, and it would be impossible to administer the trust. The court said that where a charity did not fix itself on any particular object, but was general and indefinite, and no plan was prescribed and no discretion given in the will for the selection of the beneficiaries, it did not admit of judicial administration.

In South Carolina the English doctrine of charities has been generally accepted, but there, as in England and in the other States of this country, where a particular charity has not been specified, but the charity is of a general nature, without the appointment of trustees to select the beneficiaries, the courts will not devise a scheme for carrying it out.

Atty. General *vs.* Jolly, 1 Rich. Eq., 99.
Gibson *vs.* McCall, 1 Rich., 174.

In Tennessee charitable bequests are upheld quite broadly.

Green *vs.* Allen, 5 Humph., 204.
State *vs.* Smith, 16 Lea., 662.
State *vs.* Ellison, 4 Bax., 99.
2 Cold., 80; 1 Swan., 360; 7 Heisk., 694.

But the Supreme Court of that State has held that the beneficiary of the trust, or the class that is to take, must be designated by the testator, so that some one or class will have the right to compel the enforcement, and where the authority is so general that the matter of selection is left absolutely to the trustees, without any guide marked out by the testator, by which the trustees would be controlled, even as a charity it would be too indefinite to be enforced, and hence it was held that a bequest, as follows:

> "It has been my desire to see a grand female college erected on this lot, and I hope it may now be accomplished; if the way be clear to that end, the income may be appropriated in that direction, but if not, then it is my desire and wish that the main income from this property, less the amount needed in repairs, taxes and insurance, shall be used for some charitable purpose, preference always to be given to something of an educational nature, although permissible to appropriate the income in any way it may seem to the trustees to be necessary and most desirable, as they may elect,"

was too indefinite to be carried out, and hence was invalid.

The court said:

> "Under this broad discretion and power the trustees might, instead of a female school, establish a public library, or a lecture room, or a church or women's home, or any other charity; and if either of those should be selected by these

trustees as the object of this devise, certainly it could not be said they had exceeded their powers and discretion, and if either should be established it would not be because of directions in the will of the testator, *but from choice and preference on the part of the trustees.* We are constrained to hold that such a charitable devise can not be enforced, and is invalid."

Johnson *vs.* Johnson, 92 Tenn., 571.

In Maryland the principle is clearly recognized and firmly established.

"A trust, to be upheld, must be of such a nature that the *cestuis que trust* are defined and are capable of enforcing its execution by proceedings in a court in chancery."

Maught, Exr., *vs.* Getzendanner, 65 Md., 529, 533, 72 Md., 67.

Church Ext. of M. E. Church et al. *vs.* Smith 56 Md., 362.

Dashiell *vs.* The Atty. Genl., 5 Harris and Johnson, 392 and 6 H. and J. I.

Yingling *vs.* Miller, 77 Md., 104.

Rizer *vs.* Perry, 58 Md., 112.

Needles *vs.* Martin, 33 Md., 609.

Wheeler *vs.* Smith, 9 How., 55.

The most recent Maryland decision is:

Trinity M. E. Church *vs.* Baker, 91 Md., 539 (decided June, 1900).

In *Needles* vs. *Martin* the court held that the trust declared by the testator for the education of free colored persons in the city of Baltimore, was void for uncertainty.

In the case of *Pratt* vs. *Sheppard*, 88 Md., 610 (Dec. 21, 1898), Chief Justice McSherry reviews all the Maryland decisions above cited.

In *Gambell* vs. *Trippe*, 75 Md., 252, the language of the will was, "I direct my trustees to pay over the whole residue and remainder of my means and estate to some Presbyterian institution in Baltimore, as they may determine, for charitable or religious purposes;" and the court held (p. 254), first, that the bequest was void for indefiniteness as to the institution intended to be benefited or promoted, and the purposes to which the fund was to be applied, and the next of kin became entitled; and, secondly, that the object intended to be benefited or promoted is neither so certain nor definite as to enable a court of equity to declare who is entitled to the fund to the exclusion of all others (citing *Barnum et al.* vs. *Mayor of Baltimore*, 62 Md., 275, 292).

The Maryland decisions have been followed by the courts in the District of Columbia, and they expound the principles as held by our courts in all cases like the one at bar.

In *Long et al.* vs. *Gloyd*, 25 W. L. R., 50, decided January 21, 1897, it was held:

> "That the description of 'the indigent children' to whose 'education and training to useful life' the rents and profits of the real estate devised are to be devoted, is too vague and uncertain to be enforced."

In *Coltman* vs. *Moore*, 1 MacArthur, 197, where the devise was to the corporation of Washington, "to establish and endow a house of refuge for destitute reputable females," the court held:

> "This is too vague. No means are suggested by which they can by possibility be ascertained. The locality is not stated from which the objects

of this bounty are to be selected, whether from the city or District, or from a particular State, or from all the States, or from the world at large; nor is any method pointed out by which to establish the right of destitute reputable females to that designation."

Speer *vs.* Mosher, 31 W. L. R., 630.

### 3. Has the Trustee Been Able to Carry Out the Trust So as to Accomplish the Purpose of the Testator?

The trustee, Columbian University, has received the income and carried it into its general funds. It has advertised the scholarship in its catalogues. For over twenty years it has assigned students, at its own pleasure and selection, to receive free education, without any reference, save in a few cases, to their purpose in taking it. One or two have got into the Navy, but this was because they received appointment to the Navy. How has the sole purpose of the testator "to do something for the Navy, to pay a debt he felt he owed it," been in any way accomplished? How did it help the Navy that these one or two were so fortunate as to receive appointment to the Navy from some Senator or Representative, or the President? The Government itself gives full and complete education to all its naval cadets who enter the Naval Academy at Annapolis. This one year's education does not and can not help the Navy.

The testator has simply made a devise, as he declares, to do something for the Navy, to pay a debt he felt he owed it. But his direction as to carrying out this sole purpose is utterly futile and useless to that end. The testator having no general charitable purpose, his devise must fail, and there is a resulting trust for his heirs.

**Equity Has Jurisdiction.**

It is objected to the bill of complaint that the appellants have a plain, adequate and complete remedy at law.

1. Section 723, Revised Statutes of the United States, has never been regarded as anything more than declaratory of the existing law, and was intended to emphasize the rule and impress it upon the attention of the courts. It was not intended to restrict the ancient jurisdiction of courts of equity or to prohibit their exercise of a concurrent jurisdiction with courts of law in cases where such concurrent jurisdiction has been previously upheld.

Boyce *vs.* Grundy, 3 Pet., 210.
N. Y. Guaranty, &c., Co. *vs.* Memphis Water Co., 107 U. S., 205.
1 Pom. Eq., sec. 344.

Under this section the remedy at law, in order to exclude equity, must be as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity.

Tyler *vs.* Savage, 143 U. S., 79.
Lewis *vs.* Cocks, 23 Wall., 466.

If the relief obtainable in equity be greater than is possible in a court of law, the remedy at law is not adequate and complete, and equity has jurisdiction. Or, as it is otherwise stated, if the remedy sought be one which may also be given in a court of law, yet if it be one which, under the facts and circumstances of the case, can only be made complete and adequate through the equitable modes of procedure, equity has jurisdiction.

1 Pom. Eq., sec. 130.

Suits by heirs at law to set aside an alleged will of lands are familiar subjects of equitable cognizance.

1 Pom. Eq., sec. 138.

And suits to declare void alleged trusts and thereby to set up resulting trusts in the heirs.

2 Story, Eq. Jur., sec. 1196.
Adams Eq. (Ralston), 32.
Underhill on Trusts and Trustees, 149–150.
Lingan *vs.* Carroll, 3 H. & McH., 333.
Tongue *vs.* Nutwell, 13 Md., 415.
Rizer *vs.* Perry, 58 Md., 112.
Underhill on Wills, 608, 610, 627.

A resulting trust is a creature of equity and can be enforced in a court of equity only; and such a trust arises whenever the legal title passes and is impressed with a void or exhausted trust.

Hopkins *vs.* Grimshaw, 165 U. S., 342.

In the case at bar, Admiral Powell's will undoubtedly passed the legal estate to the Columbian University. An action of ejectment against the corporation would determine only its right of possession as against the heirs at law, and as the creation of the legal estate was in all respects regular and in due form of law how could it be defeated in such action? The question raised in this suit is not whether that corporation has the legal title—for that is conceded—but whether it does not hold that title in resulting trust for the heirs. A court of law can not determine this; a court of equity only has the jurisdiction so to do.

This is very different from the classes of cases relied on below by counsel for the appellees, of which that of *Whitehead* vs. *Shattuck*, 138 U. S., 146, is the simplest in type. In that case the vehicle by which the legal title was conveyed to the defendant was attacked as inherently bad, because of fraud in its making. In any case in which

title is traced through an instrument insufficient in itself to pass title, whether through some legal defect or because of fraud, such instrument can be shown at law so to be insufficient; the result being that the title did not pass, because, in law, there was no such instrument. But where title once passes it can not be divested out of the grantee by any judgment which a court of law may render.

The action of ejectment by the heir against a devisee aptly illustrates the distinction here taken. The heir does not sue to set aside the will, but he resists the admission of the will in evidence upon the ground of a vice inherent in the instrument, namely, that it is no will, because either not properly executed or not the free and unconstrained act of a competent testator. So in cases of fraudulent instruments, invalid bonds, and the like; the vice, and, therefore, the legal nonexistence, of the instrument relied upon may be shown at law as an impediment to judgment. But no judgment in such a case invalidates and condemns to cancellation the vicious instrument.

The case of *Killian* vs. *Ebbinghaus*, 110 U. S., 568, merely holds that a bill of interpleader may not be used as in effect an action of ejectment between the defendants thereto; and all the other cases relied on by appellees—except *Ould* vs. *Washington Hospital*—rest upon the undoubted principles (1) that where the question whether a given right exists turns upon some inherent vice in the mechanics of its creation—as legal insufficiency, whether of form or procedure, fraud in the making, and the like—such question is as determinable at law as in equity, or (2) where a wrong is remediable by damages in an action at law, resort must be had to such action.

The case of *Ould* vs. *Washington Hospital*, 95 U. S., 303, has no application whatever in the premises. In that case the devise was to A and B, in trust, to convey to a

corporation when created. The corporation was created and the conveyance made. The action was ejectment, but no question as to forum or form of action was raised, and the case went off on the question of the sufficiency of the gift in respect of the certainty of its beneficiaries.

2. But every other consideration apart, the avoidance of a multiplicity of suits justifies, and indeed compels, resort to equity.

"The general principle of the equity procedure," says Pomeroy, "requires all the parties interested in the subject of an action to be brought before the court, and the whole controversy to be settled by one adjudication" (sec. 141); and, again, this instance of equitable jurisdiction "plainly rests upon the arbitrary, unyielding, and insufficient mode of procedure in actions at law, and in the ample power of the equitable procedure to adapt its judicial proceedings and its final reliefs to the circumstances of each case, by bringing in all parties interested in a controversy, no matter how unequal their interests may be, and by awarding complete relief, no matter how conditional and limited, to all these parties by means of one suit and decree" (sec. 181).

By no possibility could the Johns Hopkins University be united in, or bound by the result of, an action in ejectment against the Columbian University; and even if it could be bound by such result, that fact would not secure the appellants against the possibility of a separate litigation with that corporation after the determination of an action against its predecessor in the devise in question.

This distinct ground of the jurisdiction of equity is plainly recognized by the Supreme Court of the United States in two of the cases relied on by the appellees—*Hipp* vs. *Babin*, 19 How., 271, and *Smith* vs. *Canal Co.*, 141 U. S., 656—and, indeed, is beyond question.

**Laches.**

The objection of laches is without force.

Length of time alone is not a test of staleness of a claim. The question must be determined by the facts and circumstances of each case and according to right and justice.

Drake *vs.* Wild, 65 Vermont, 611.
Ripley *vs.* Seligman, 88 Mich., 177.

Demands not barred by Statutes of Limitations can not be deemed stale.

Taylor *vs.* Chickasaw Co., Suprs., 70 Miss., 87.
Re Howe, 61 Hun, 608.

So long as demands secured by mortgages are not barred by the Statute of Limitation, there can be no laches in prosecuting a suit upon the mortgage to enforce them.

Cross *vs.* Allen, 141 U. S., 528.

Laches is not, like limitations, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties.

Galliher *vs.* Cadwell, 145 U. S., 368.
Halstead *vs.* Grinnan, 152 U. S., 412.

Authorities to the same general effect might be multiplied indefinitely.

In the case at bar there has from the first been no change in the condition of property or parties; the situation depends upon no testimony of which there has been any possibility of loss or impairment; and whatever apparent delay there has been on the part of the

appellants has been meritorious, as it afforded the appellees ample time to test the practical possibilities of the attempted endowment.

The doctrine of laches can not apply to a case like this.

Blennerhasset *vs.* Day, 2 Ball & B., 104.
Murray *vs.* Palmer, 2 Sch. & Lef., 487.
Platt *vs.* Platt, 58 N. Y., 646.
Kline *vs.* Vogel, 6 West. Rep., 647.
Drake *vs.* Wild, 65 Vermont, 611.
Prevost *vs.* Gratz, 6 Wheat., 483.

**Heirship.**

Appellees claim that complainants are not proved to be the heirs of Admiral Powell. It would be extremely tedious to go through the long detail of heirship in this brief. Any heir had the right to file the bill, whether any other heirs were parties or not. The absolute and final determination of heirship may be properly tested only when the question of division of the property arises. It is believed that the evidence shows that complainants are the heirs and all the heirs of Admiral Powell, but, however that may be, there can be no doubt that complainants are heirs, and have a right to file this bill to have the bequest declared invalid. If the bequest is declared invalid, appellees are not interested in the question whether all or only a part of the heirs are joined as complainants.

Respectfully submitted.

J. K. M. NORTON,
HENRY E. DAVIS,
*Solicitors for Appellants.*

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 263.

BROOKE P. TAYLOR ET AL., APPELLANTS,

*vs.*

COLUMBIAN UNIVERSITY (NOW KNOWN IN LAW AS GEORGE WASHINGTON UNIVERSITY), ET AL., APPELLEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## BRIEF ON BEHALF OF APPELLEES.

Appellees contend that the decision of the Court of Appeals of the District of Columbia was correct and that the action of the Supreme Court of said District in dismissing the bill should be sustained upon the following grounds:

1. For non-joinder of necessary parties.
2. Because complainants (appellants) have not been proven to be the heirs of Admiral Powel, through whom they claim.
3. For variance between the bill and the proof.
4. Because complainants (appellants) have proved that the trust is being executed, instead of the contrary, as alleged in the bill.
5. That the proper remedy, if any, is ejectment.

**6. That complainants (appellants) have been guilty of laches.**

**7. The devise is to the Johns Hopkins University in case the George Washington University fails to execute it.**

**8. That the trust is a charitable one and would in no event revert to the heirs of the testator.**

I.

**For Non-Joinder of Necessary Parties.**

If there is any competent testimony as to the heirship in this case, it is proven by the genealogical chart appended to this brief and which is accurately compiled from complainants' own testimony (Rec., pp. 14-44), that there is at most but 25/168 of the heirship represented.

The record shows that Admiral Powell, the testator, left no issue, and that appellants claim as descendants of testator's grandfather, Col. Levin Powell (Rec., pp. 4, 15). Col. Levin Powell left five sons and one daughter who attained majority (Rec., p. 15), and other children (Rec., p. 15) who the only witness who testified as to the heirship says she learned from a family bible (not produced, nor its contents stated), died in infancy (Rec., pp. 15, 20). Eliminating from the present discussion the children of Col. Levin Powell not named by the witness (but who *may* have numerous descendants now living), the family of Col. Levin Powell was divided into six distinct branches, comprising over 226 living heirs (Rec., pp. 4-44—see Chart appended to this brief). Of these 226 and more living heirs, only *forty-one* are made parties to this cause, and these forty-one alleged that they are *the only next of kin and heirs at law of the testator* (*Rec. p. 7*)! Of these forty-one, thirty-eight are some, but not all, of the heirs of Cuthbert Powell, a son of Col. Levin Powell and three are some, but not all, of the heirs of Sarah H. Powell,

a daughter of Col. Levin Powell. *The other four branches of the family are entirely unrepresented.* Of the branches represented, there is but ¾ in interest of the Cuthbert Powell branch before the court, and 1/7 of the Sarah H. Powell branch. There is, therefore, in this case but ¾ of 1/6+1/7 of 1/6=25/168 represented.

It further appears (Rec., pp. 10, 75) that another equity suit is pending for the same purpose as this one, filed by a number of persons who are not parties to this case or mentioned in the testimony or in the genealogical chart, and who claim to be the only heirs at law of Admiral Powell. The answer suggests (Rec., p. 10) that these persons should be made parties, but the complainants have paid no attention to this suggestion.

The Supreme Court of the United States has used the following language in the case of Caldwell *vs.* Taggart, 4 Peters, 190, 202:

> "The general rule is laid down thus: 'However numerous the persons interested in the subject of a suit, they must all be made parties plaintiffs or defendants, in order that a complete decree may be made, it being the constant aim of a court of equity to do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject of a suit to make the performance of the order perfectly safe to those who have to obey it, and to prevent future litigation.' And again, 'all persons are to be made parties who are legally or beneficially interested in the subject-matter and result of the suit.'"

See, also, Story *vs.* Livingston, 13 Peters, 359.
Mandeville *vs.* Riggs, 2 Peters, 482.
16 Cyc., 181, 182, et seq.

> "It is of course impossible to divest or destroy a title by suit in which the holder of the title attacked is not a party. Therefore, where the decree

is to affect a title all holding or claiming such title must be brought in."

16 Cyc., 185, 186, cases cited.

"One must be joined who otherwise, not being bound by the decree, might assert a demand against the principal defendant which would be inequitable after the latter's performance of a decree in favor of plaintiff."

16 Cyc., 188, cases cited.

"Where the object of a bill is to divest a title to property, the presence of those holding or claiming such title is indispensable."

16 Cyc., 189, cases cited.
Richardson *vs.* Hunt, 2 Munf., 148.
Williamson *vs.* Jones, 43 W. Va., 562.
Tobin *vs.* Portland Mills Company, 41 Oregon, 269.

Of course it is admitted that there are cases where, the parties in interest being numerous, and the litigation being for objects common to them all, some of them many maintain a bill on behalf of themselves and all the others But, to use the language of this Honorable Court:

"In all cases where exceptions to the general rule are allowed, and a few are permitted to sue, or defend, on behalf of the many, by representation, care must be taken that persons are brought on the record fairly representing the interest or right involved so that it may be fully and honestly tried."

U. S. *vs.* Old Settlers, 148 U. S., 427.
Smith *vs.* Swormstedt, 16 How., 288.
McArthur *vs.* Scott, 113 U. S., 340, 392.
16 Cyc., 191.

Mr. Justice Story has expounded this doctrine at some length in the case of West *vs.* Randall, 2 Mason, 181.

In that case the bill was filed against the defendants as survivors of four trustees, for discovery and account of certain real and personal property alleged to have been con-

veyed to them in trust by one William West, the surplus, after satisfying the trust, to be used for West's benefit. Plaintiff, as one of West's heirs at law, claimed title to 1/11 of the surplus. The other heirs at law of West were not made parties to the bill, and no reason was assigned for the omission.

Judge Story, after stating the general rule that all persons materially interested in the subject-matter of the bill should be made parties, however numerous they may be, illustrates the reason for the rule by stating that it should apply in the following cases (page 191):

> "Where one legatee brings a bill against an executor, and there are many other legatees, none of which will be bound either by the decree or by the account to be taken of the testator's effects, and each of these legatees may draw the account in question over again at their leisure; or where several persons are entitled as next of kin under a statute of distributions, but only one of them is brought on to a hearing; or where a man is entitled to the surplus of an estate under a will, after payment of debts, and is not brought on, or where real estate is to be sold under a will and the heir at law is not brought on."

He then adverts to the exception to the rule, to the effect that if the parties are very numerous and all are sufficiently represented, the failure to join all will be excused, but he says (page 195) that the principle of the exception—

> "always supposes that the decree can, as between the parties before the court, be fitly made without substantial injustice to third persons. If it be otherwise the court will withhold its interposition."

He then criticises the bill in the particular case under consideration as follows (page 197):

> "No reason is shown on the face of the bill why the other heirs, having the same common interest,

> are not parties to it. * * * The other heirs might, if parties, controvert the very fact of the heirship in the plaintiff, and that would touch the very marrow of his right to the demand now in question."

Judge Story recognizes that in that litigation, if the suit should proceed to an accounting, the heirs who were not parties would not be bound by such accounting and could again "controvert the whole matter now in litigation and thus vex them" (the defendants) "with double inconveniences and perils." He also refers to the fact that no reason was disclosed by the bill for the omission of the other heirs.

This case is referred to with approval in American Steel, etc., Co. *vs.* Wire Drawers', etc., Unions, 90 Fed., 598.

This Court has also said that—

> "where a suit is brought by or against a few individuals as representing a numerous class, that fact must be alleged of record so as to present to the court the question whether sufficient parties are before it to properly represent the rights of all."
>
> McArthur *vs.* Scott, 113 U. S., 340, 395.
> Lanchester *vs.* Thompson, 5 Madd., 11, 16.
> Calvert on Parties, 44, 169.

If the court should be inclined to think that the devise in this case has failed, and that the rents and profits of the property in dispute should be distributed among Admiral Powell's heirs, it would be manifestly impossible upon this meager testimony as to the heirship, to make any distribution of these rents and profits, as prayed by appellants. In the first place, without some competent testimony throwing light upon the other children of Col. Levin Powell, who are *thought* to have died in infancy, and at least one of whom lived to be a youth (Rec., p. 20), the court could not say whether to start by dividing the fund into six, eight, nine or more main portions. Each branch of the family is entitled to be heard on this proposition.' It may also be true

that the complainants are not heirs of Admiral Powell at all, or that some of these numerous heirs who have died since the death of Admiral Powell, left wills in favor of members of other branches of the family who are not before the court. There is no testimony as to this (Rec., p. 33). It might also be true that there was a codicil to the will of Admiral Powell, under which, in case the devise in question should fail, the property was devised over to some of these other heirs. While this is not probable, certainly the absent heirs have just as much right as these parties who are so remotely related to the testator, to be heard upon this as well as upon any one of the numerous propositions before the court. The bill prays (Rec., p. 8) for an accounting of the rents and profits and the payment of same to the *complainants*. Certainly no trustee who might distribute the fund under any decree in this case would be protected by it against the just claim of any absent party.

It will be noticed too that the complainants do not even pretend to be *representatives* of the entire family and to file the bill on behalf of themselves and all others who might intervene, but they claim *adversely to all the others*, alleging themselves to be Admiral Powell's *only heirs at law and next of kin* (Rec., p. 4); and they insist upon proceeding with this suit on that hypothesis, although they have known for nearly seven years that this is not true (Rec., pp. 33,14).

## II.

### Because Complainants Have Not Been Proven to be the Heirs of Admiral Powell Through Whom They Claim.

Only one witness, Miss Rebecca Powell, is adduced to testify as to the heirship. She was called by the complainants, and says that the only information she has as to the

earlier branches of the family is derived, first, from a family Bible, which is proven to be in existence, and though demanded by defendants, was not produced (Rec., pp. 15, 19, 20, 21), and no excuse given for its nonproduction, not even that it was outside of the jurisdiction of the court; and, second, from her father and grandfather (Rec., pp. 15, 17, 19, 34); but there is no proof *aliunde* of the relationship of declarant.

She claims to know nothing of the children of Colonel Levin Powell who she *thinks* died in infancy, except from the family Bible (Rec., p. 20).

Her information as to the younger members of the family is derived largely from hearsay from living members (Rec., pp. 21-25, 30, 31 and 34).

Although the bill describes certain complainants as infants (Rec., p. 2), their infancy is not proved nor are even the names of the alleged infant complainants, Cordelia and Virginia Powell, mentioned in the proof.

Although this witness gave complainant's counsel the information upon which the bill was filed (Rec., p. 33), none of the various branches of the family are mentioned in the bill of complaint except certain descendants of Cuthbert Powell who represent in all not over 1/8 in interest, and two descendants of Sarah H. Powell representing not more than 1/42 in interest. Llewellyn Powell and Ellen Edwards Gray, children of Cuthbert Powell, and their descendants, are not even mentioned in the bill, which represents that complainants are the only heirs at law of Admiral Powell.

The marriages of some of these heirs are proven (Rec., pp. 26, 27, 29-32), and others not proven, among the marriages not proven being that of Charles Levin Powell, the father of the witness, who does not even give her mother's name.

As to four of the six children of old Col. Levin Powell (testator's grandfather), who are mentioned by the witness,

the following defects, among others, are shown in her testimony:

**William Harrison Powell Son of Col. Levin Powell.**

Witness knows nothing of this branch except through what her father told her and through correspondence with living members of the family (Rec., pp. 17, 24, 27, 28).

**Maj. Burr Powell, Son of Col. Levin Powell.**

She knows nothing as to Edward Burr Powell, son of Maj. Burr Powell, although a person now living and who has not been produced, can testify as to him (Rec., pp. 21, 23, 25, 30, 31). She does not know whether John Henry Powell, grandson of Maj. Burr Powell, is living or dead (Rec., p. 28).

**Cuthbert Powell, Son of Col. Levin Powell.**

Cuthbert Powell was witness' own grandfather, but she does not state whether Llewellyn Powell, son of Cuthbert Powell and who was witness' uncle, was married or not, but she gives some names of certain of his alleged heirs, *who are not mentioned in the bill of complaint* (Rec., pp. 41, 2).

Aside from the fact that witness does not state that her own father, Charles Levin Powell, son of Cuthbert Powell (Rec., pp. 16, 18), was married, she says that her father left a will, the contents of which are not stated (Rec., pp. 25, 26). Yet the witness is a party complainant *as her father's heir at law*.

Witness does not prove the marriage of her Uncle John Simms Powell (Rec., p. 41), although many of his alleged heirs are parties complainants in the bill.

Witness says that her Uncle Levin Powell left a will in favor of witness (Rec., pp. 26, 34), although its contents are not proven and she says she took no care of it, and Levin's alleged heirs are parties complainants in this bill

claiming as in case of intestacy. She says her Uncle Levin left a widow, but she does not know whether this widow is living or dead (Rec., p. 26).

Witness does not know whether her Aunt Mary Powell left a will or not (Rec., p. 26), although her children are claiming as heirs at law (Rec., p. 4).

The heirs of her aunt, Ellen Edwards Powell (Rec., p. 42), are not mentioned in the bill (Rec., p. 4).

Witness does not know whether her aunt, Jane Powell, left a will (Rec., pp. 26, 27), nor is the death of Jane Powell's husband proved (Rec., p. 27), and yet their descendants are parties complainant as in case of intestacy (Rec., p. 4).

**Sarah H. Powell, Daughter of Col. Levin Powell.**

Witness' only information as to the death of Mary Chilton, daughter of Sarah H. Powell, was derived from a grandchild whose name is not given, and the testimony in this regard is very vague (Rec., p. 27).

Witness has no information as to whether Ellen Chilton, daughter of Sarah H. Powell, left a will (Rec., p. 27), nor whether Ellen Chilton's husband is dead, although Ellen Chilton's alleged heirs are parties complainant in this bill (Rec., p. 5).

**General Defects in Proof.**

It will be observed that throughout the testimony of this witness marriages are not proved, dates of deaths of various alleged heirs are not given, and no information given as to the contents of their wills, if any.

The relationship of a declarant can not be established by her own declarations, and until such relationship is proved such declarations are inadmissible.

Fulkerson *vs.* Holmes, 117 U. S., 389.
Blackburn *vs.* Crawford, 3 Wall., 175.
Anderson *vs.* Smith, 2 Mack., 281.
Green *vs.* Norment, 5 Mack., 80.
Welch *vs.* Lynch, 30 App. D. C., 122.

Information derived by a witness "from his uncles in Ohio" is incompetent, unless their relationship is established *aliunde* and that declarants were dead. Moreover, their declarations should have been given, and not witness' conclusions therefrom.

Stein *vs.* Bowman, 13 Pet., 209.
Jennings *vs.* Webb., 8 App. D. C., 43, 56.

Declaration by a person connected with the family by marriage only, not competent.

Blackburn *vs.* Crawfords, 3 Wall., 175.
See Smith *vs.* Cosey, 26 App. D. C., 569.
Scott *vs.* Herrell, 27 App. D. C., 395.

The sole witness as to heirship in the case at bar says that she derived her knowledge largely from a family Bible, which at some indefinite time in the past she saw; that the Bible is now in existence, but its whereabouts, whether within or without the jurisdiction of the court, is not shown (Rec., pp. 15, 19-21); nor is there any testimony offered as to where or by whom the record in the family Bible was made, or of the knowledge possessed by the person recording the entries of the facts recorded, or that it was ever acknowledged by any one to be an authentic record, or of the age or place of custody of the book up to the time the witness saw it; and although an inspection of the book itself was demanded by appellees through their counsel, it was never produced nor its absence accounted for, nor even a copy of the entries alleged to have been made therein produced. Of course, the testimony was not competent.

Blackburn *vs.* Crawfords, 3 Wall., 175.
Supreme Council of Golden Star Fraternity *vs.* Conklin, 60 N. J. L., 565, and the elaborate note appended to the report of this case in 41 L. R. A., 449.

It is incumbent upon claimants to prove all the different links in the chain of descent, which will show that the person last seized and the claimants descended from some common ancestor, together with the extinction of all those lines of descent which claim in preference to the claimants. They must prove the marriages, births and deaths, and the identity of persons necessary to fix title upon themselves, to the exclusion of others who would have, if in existence, a better title to the land sought to be recovered.

2 Greenl. on Ev. (14th Ed.), Secs. 309, 310.
Posey *vs.* Hanson, 10 App. D. C., 504.
Anderson *vs.* Smith, 2 Mack., 278, 283.
Richards *vs.* Richards, 15 East, 293. Note A.
Sprigg *vs.* Moale, 28 Md., 506.

The claimant must remove every possibility of title in another person in the line of descent before he can recover; no presumption being admitted against the person in possession.

Posey *vs.* Hanson, 10 App. D. C., 496, 505.
Kelso *vs.* Stigar, 75 Md., 404.
Inhabitants of Hyde Park *vs.* Inhabitants of Canton, 130 Mass., 505.

Before the presumption of death can be indulged in there must be some proof of inquiry made of the persons and at the places where news of heirs, if living, would most probably be had.

Posey *vs.* Hanson, 10 App. D. C., 506.
Shriver *vs.* State, 65 Md., 285.
Lawson on Presumptive Evidence, p. 212, Rule 44.
2 Wharton on Ev., Sec. 1274.

In the case of Smith *vs.* Cosey, 26 App. D. C., 570, some pertinent criticisms were made by the court upon the failure of the claimants to prove the intestacy of an ancestor whose property was claimed by right of heirship; also upon the

vague nature of the pedigree testimony which was there introduced. These comments are equally applicable to the case at bar.

III.

**For Variance Between the Bill and the Proof.**

These variances have been alluded to under the first and second subheads and are further demonstrated in the genealogical chart submitted to the court, and appended to this brief.

IV.

**Because Complainants Have Proved That the Trust is Being Executed, Instead of the Contrary, as Alleged in the Bill.**

The Court of Appeals, following the conclusion of the trial justice, held that the trust was capable of execution and that it was in some measure being executed (Rec., p. 85). It stated that the testimony was defective in that it failed to show that the entire net proceeds of the trust property have been devoted exclusively to the purposes of the trust.

The Court of Appeals, in making this statement, evidently overlooked the fact that the *defendants* examined no witnesses at all, all the witnesses produced having been called by the complainants themselves. The complainants having disproved their own allegations that there had been a failure to execute the trust, and therefore having put themselves out of court, the defendants saw no necessity to proceed to show that the entire net proceeds of the trust property had been devoted exclusively to the purposes of the trust. It was unnecessary.

The testimony as to the execution of the trust is embodied in pages 44 to 74 of the record, and is summed up by the trial justice in these words (Rec., p. 78):

> "From the testimony adduced by plaintiffs upon this point, it appears that beginning with the scholastic year 1885-6 (the will of Powell was probated in 1885), the defendant 'Columbian University' published in its annual catalogues that under the terms of the 'Admiral Powell Endowment' free scholarships would be given to a limited number of pupils who were preparing for admission to the United States Naval Academy at Annapolis. This notice was in some issues of the catalogue more explicit, giving in greater detail the terms of the trust, and in other issues courses of study were given from which the special course contemplated by the terms of the trust might be selected. It further appears from the records of the University that beginning with the scholastic year 1891-2, twenty-four young men actually took a course of study under the Powell scholarships, in some cases the same man being permitted to pursue the course for more than one year. Of this number at least two entered the Naval Academy. I find nothing in the evidence showing the net income derived by the University from the trust property, but there is nothing to show that the full net income thereof was not applied to the administration of the trust. I am of the opinion that the evidence adduced is not sufficient to demonstrate the 'incapacity' of the execution of the trust."

There is no evidence upon which it would be possible to base any other conclusion.

But assuming that the trust has not been and is not being executed, this would not entitle appellants to the property, or even give them a right to enquire into the non-execution of the trust. The Court of Appeals in its former opinion, reported in 25 App. D. C., 124, has held that the trust is

valid; and it is settled law as laid down by this Honorable Court, that neither the heirs of the testator, nor any private person, could have any right to enquire into this, but that this right would exclusively belong to the State, to be exercised by *quo warranto* or other proper judicial proceeding.

Vidal *vs.* Girard's Executors, 2 Howard, 127.

The complainants (appellants) after taking their testimony abandoned all idea that the trust is not, as a matter of fact, being executed. The bill was filed upon two theories: 1st, that the trust was illegal; and 2nd, that it was not being executed. Appellants on page 15 of their brief filed in the Court of Appeals on the second appeal in this case, state that the meaning of their allegation that the University has been wholly unable to execute the trust is:

> "That though the University had attempted to carry out the bequest, the purpose of the testator, to do something for the Navy, had not been met. No other meaning could be given it. It could not have been intended, nor was it intended, to charge that no students had ever taken advantage of the free one year's course. The evidence shows that a number of students took the course provided."

This admission removes the necessity of examining the record to verify the conclusion of both the courts below that the trust is being carried out, and leaves the complainants (appellants here) contending only that the trust is invalid.

Before entering upon a discussion of this phase of the case, a few preliminary questions will be discussed, a decision in favor of appellee in any of which, will avoid the necessity of discussing the validity of the trust at all.

## V.

### That the Proper Remedy, if Any, is Ejectment.

In all cases in which a party has a plain, adequate and complete remedy at law, a court of equity is without jurisdiction because the defendant has a constitutional right to a trial by jury.

Whitehead *vs.* Shattuck, 138 U. S., 146, 150.
N. Y. Guaranty Co *vs.* Memphis Water Co., 107 U. S., 205.
Lewis *vs.* Cocks, 23 Wall., 466.
Smyth *vs.* N. O. Canal etc. Co 141 U. S., 656, 660.
Grand Chute *vs.* Winegar, 15 Wall., 373.
Buzard *vs.* Houston, 119 U. S., 347, 351.
Lacassagne *vs.* Chapius, 144 U. S., 119, 124.
Smith *vs.* Bourbon Co., 127 U. S., 105, 109.

If, in the case at bar, it is true that the invalidity of the devise is apparent upon its face, as appellants contend that it is, then appellants have a plain remedy in ejectment against the George Washington University, and the Court of Appeals has so held in this very case (25 App. D. C., 124, 130), citing *Ould vs. Wash. Hosp. for Foundings*, 95 U. S., 303.

In that case an action of ejectment was instituted in the Supreme Court of the District of Columbia by the heirs of Joshua Pierce, to recover real estate devised to trustees upon a charitable trust, upon the ground that the devise was void. This court went into an elaborate discussion of the points involved, and while it affirmed a judgment for the defendant, it evidently had never occurred to the learned counsel for the defendant, the late Walter S. Cox, one of the ablest jurists who ever graced the District bench, that the plaintiff's remedy was in equity and not at law.

In the case of Killian *vs.* Ebbinghaus, 110 U. S., 568, complainant, who was out of possession of certain real es-

tate occupied and held by the defendants in trust for the "German Calvanists' Society," filed a bill in equity claiming that complainant's *cestui que trustent* were the legal beneficiaries under that trust, and sought to be placed in possession of the property and for an accounting of the rents and profits.

This court dismissed the bill, stating that:

> "A bill in equity is not the proper means to recover possession of land, there being no fraud in the case, nor other matter specially the subject of equitable cognizance, and a party cannot, by any colorable suggestion of fraud, account, etc., use such a bill in place of the common law remedy of ejectment."

And the court added:

> "If the bill be clearly one of the sort above spoken of, it is the duty of the court *sua sponte*, and though there be no demurrer, plea or answer setting it up, to recognize the fact and give to it effect."

The court held that the prayer for an accounting will not give a court of equity jurisdiction, citing *Hipp vs. Babin*, 19 How., 271, where this court affirmed the dismissal of a bill in equity which was clearly an ejectment suit in disguise, using this language:

> "Nor can the court retain the bill, under an impression that a court of chancery is better adapted for the adjustment of the account for rents, profits and improvements. The rule of the court is that when a suit for the recovery of the possession can be properly brought in a court of equity, and a decree is given, that court will direct an account as an incident in the cause. But when a party has a right to a possession, which he can enforce at law, his right to the rents and profits is also a legal right, and must be enforced in the same jurisdiction."

But it is argued that the equitable jurisdiction can be sustained on the ground of avoiding a multiplicity of suits: that in an ejectment suit the Johns Hopkins University could not be made a party defendant, and that it would therefore not be bound by any judgment in a suit filed by these appellants against The George Washington University. This argument entirely overlooks the fact that both universities are claiming under the same title. The plaintiffs, if unsuccessful in an ejectment suit against the George Washington University, would be no better off if the Johns Hopkins University had likewise been a party to the suit. If successful, the plaintiffs would be put in possession of the property, giving them all they desire.

Applicants contend that inasmuch as this court sustained its equitable jurisdiction in the case of *Hopkins vs. Grimshaw*, 165 U. S., 342, the same course should be pursued here. But the two cases are quite different. In that case there was no suggestion that the trust was invalid, but merely that it had become exhausted. In the case at bar, the appellants' whole contention seems to be that the trust is void, in which event the legal title never passed to either university, and descended to the heirs at law of the testator, so that an ejectment suit by them would lie.

## VI.

### That the Complainants Have Been Guilty of Laches.

The Court of Appeals on the first appeal in this case (25 App. D. C., 124, 131), said that:

> "If the invalidity of the devise were apparent upon its face, the objection on the ground of laches in bringing the suit would be fatal, for a court of equity in a case like this should by analogy apply the rule of the statute of limitations, which bars an action of ejectment after fifteen years from the time the right

> to maintain the action shall have accrued. D. C. Code, Sec. 1265. By the allegations of the bill, more than fifteen years elapsed between the time that the Columbian University entered into possession under the devise and the commencement of the suit, and there is nothing to show that the appellees were at that time under a disability of any character."

The Court of Appeals then held that the invalidity of the devise was not apparent on its face, but that complainants might recover if, after efforts made to carry out the testator's intention, the incapacity of the execution of the trust has been demonstrated.

The complainants (appellants here) have put themselves out of court for the reason that they are now contending *that the trust is invalid upon its face* in which event as the Court of Appeals has said, under the laws of the District of Columbia, they would be barred by their own laches.

> See also Wash. Loan & Trust Co. *vs.* Darling, 21 App. D. C., 132.
> Peck *vs.* Haley, 21 App. D. C., 224.

This is the doctrine of this court

> Abraham *vs.* Ordway, 158 U. S., 416.

> "In matters of account, where they are not barred by the act of limitations, courts of equity refuse to interfere after a considerable lapse of time, from considerations of public policy, and from the difficulty of doing entire justice when the original transactions have become obscure by time, and the evidence may be lost."
>
> McKnight *vs.* Taylor, 1 How., 161.
> Hume *vs.* Beale, 17 Wall., 336.
> Kyle *vs.* Wills, 166 Ill., 501.

It will be noticed that many of the accounts and documents relating to this trust during its earlier years, have

become lost (Rec., pp. 48, 49, 59), and the personal recollection of professors has become dimmed through lapse of time (Rec., pp. 58, 59).

But aside from the laches of which complainants have been guilty in filing their bill of complaint, they have been guilty of such gross laches in prosecuting their case, that this of itself would disentitle them to any relief.

The bill was filed November 6, 1903. It was demurred to, the demurrer overruled, an appeal taken and the case decided by the Court of Appeals March 7, 1905 (*Col. University vs. Taylor*, 25 App. D. C., 124) and answers promptly filed by defendant the following month (Rec., pp. 9, 12). Complainants, however, took no testimony at all for seven months (Rec., p. 14), and although their testimony was very brief and all the witnesses accessible, they spent nearly two years in taking it (Rec., pp. 14, 44, 59). Defendants promptly put in the exhibits constituting their testimony, but again a delay occurred in bringing the case on for hearing, and the case is now in this court for the first time, although filed in 1903. Such dilatoriness in prosecution would alone be sufficient cause for barring any relief.

> Johnson *vs.* Stand Min. Co., 148 U. S., 360.
> Consumer's Brew. Co. *vs.* Bush., 19 App. D. C., 588.

## VII.

### The Devise is to the Johns Hopkins University in Case the George Washington University Fails to Execute It.

The will of Admiral Powell provides (Rec., p. 6) that—

> "should it at any time for any reason be impossible to carry into effect the trusts, provisions and conditions having relation to and herein imposed upon this bequest by me made for the creation of the endowment described on the part of the said Columbian University, or should it be made manifest at

> any time that the said trust is not being administered in accordance with my wishes and desires, and in conformity with the conditions specified, then and in such case it is my will and desire that the said endowment shall be placed in other hands, and to that end and upon the happening of the contingency mentioned, I do hereby give, devise, and bequeath the said property to the Johns Hopkins University of Baltimore, in the State of Maryland, and its successors, to be taken and held by the said University or the officers thereof proper for that purpose, upon the trusts and for the purposes hereinbefore particularly set forth in the bequest of said property to the Columbian University, in such manner that the purposes of the said endowment as by me indicated may be fully carried into effect."

It was charged in the bill (Rec., p. 9) that if this is a valid trust, it is not being and has not been executed by the George Washington University. While the testimony in the record (Rec., pp. 44-73) abundantly disproves this, nevertheless, if appellants' contention is correct, then it would follow that the devise over to the defendant appellee, Johns Hopkins University, would take effect.

The answer of the George Washington University states that the Johns Hopkins University is "able, ready, and willing to accept and administer the trusts of said devise at any time if for any reason it should be impossible for this defendant to administer the same or in case this defendant should fail to carry out the trusts in that regard reposed in it" (Rec., p. 11). The answer of the Johns Hopkins University (Rec., p. 13) avers that "it is able, ready, and willing to accept said property under said devise and to carry out the trusts thereof and the intention of said testator as expressed therein at any time when for any reason it may be entitled or called upon to do so."

The records shows that the Johns Hopkins University is duly incorporated under an act of the Maryland General

Assembly, and is in a position to carry out the trust (Rec., pp. 75-77).

To quote the language of the learned justice who rendered the decree in the Supreme Court of the District of Columbia (Rec., p. 79), until the Johns Hopkins University "has tried and failed, the court would certainly not be justified in frustrating the intention of the testator by bestowing the trust property upon these plaintiffs, related so remotely to him."

In the case of Jones *vs.* Habersham, 107 U. S., 174, real estate was devised to the trustees of an independent Presbyterian Church "upon the following terms and conditions, *and not otherwise*," viz: to appropriate out of the rents and profits the sum of $1,000 annually to one or more Presbyterian or Congregational Churches in the State of Georgia in such destitute and needy localities as the proper officers of said independent Presbyterian Church may select, so as to promote the cause of religion among the poor and feeble churches of the State. This devise, as well as several others in the same will, was conditioned upon the trustees not selling any of the testator's real estate "to any person or persons under any pretense or upon any consideration whatever." This Honorable Court held that the devise was not indefinite or uncertain and gave it effect, and stated that the condition against alienation would not prevent a court of chancery from permitting, in case of necessity arising from unforeseen circumstances, the sale of the land and the application of the proceeds to the purposes of the trust.

The will in that case further provided that should any sale of the property devised in trust be attempted, then a devise over to the Savannah Female Orphan Asylum should become effective. In this connection the Court said:

> "There is nothing in this clause by which the heirs at law or next of kin can be benefited in any possible view. If the conditions against voluntary alienation and levy of execution are invalid the previous de-

vises stand good. If these conditions are valid, the devise over to the Savannah Female Orphan Asylum, an undoubted charity will take effect; for as the estate is no more perpetual in two successive charities than in one charity, and as the rule against perpetuities does not apply to charities, it follows that if a gift is made to one charity in the first instance, and then over to another charity upon the happening of a contingency which may or may not take place within the limit of that rule, the limitation over to the second charity is good."

Christ's Hospital *vs.* Grainger, 16 Sim., 82, 100.
1 Macn. & Gord., 460.
1 Hall & Twells, 533.
McDonough *vs.* Murdoch, 15 How., 367, 412, 415.
Russell *vs.* Allen, 107 U. S., 163.

Even if there had been no limitation over to the Johns Hopkins University, the complainants would not be entitled to the property, but the court would appoint a trustee to carry out the provisions of the trust.

Fitchie *vs.* Brown; 211 U. S., 321.
Vidal *vs.* Philadelphia, 2 How., 127.

VIII.

**That the Trust is a Charitable One and Would in no Event Revert to the Heirs of the Testator.**

This is undoubtedly a charitable trust.

The definition which is probably most generally accepted of a charitable trust, is that given by Mr. Justice Gray in his exhaustive and learned opinion upon this general subject in the case of Jackson *vs.* Phillips, 14 Allen, 539, and is as follows:

"A charity in the legal sense may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number

> of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."
>
> "All gifts for the promotion of education are charitable in the legal sense."
>
> Russell *vs.* Allen, 107 U. S., 163.

A valuable note appended to the report of the case of Vidal *vs.* Girard's Executors, as the case is reported in the 11th Law. Ed., 205, states a number of instances of trusts which have been held to be charitable.

It is well settled that a charitable trust does not violate the rules against perpetuity.

> Jones *vs.* Habersham, 107 U. S., 174.
> Jackson *vs.* Phillips, 14 Allen, 539.
> Ingraham *vs.* Ingraham, 169 Ill., 432.

Notwithstanding it has been repeatedly held that a trust for the benefit of an indefinite number of persons can be supported as a charitable trust, the appellants are still seeking to argue this proposition.

The Court of Appeals of the D. C. on a former appeal (25 App. D. C., 124, 131), held that this particular trust was valid, quoting from 3 Pomeroy's Eq. Jur., Sec. 1025, as follows:

> "One of the distinguishing elements of a 'charitable' as compared with an ordinary trust consists in the generality, indefiniteness, and even uncertainty which is permitted in describing the objects and purposes of the beneficiaries. From the very definition of a 'charitable trust' the beneficiaries are always an uncertain body or class; but the doctrine goes further than this. If the donor sufficiently shows his intention to create a charity, and indicates its

> general nature and purpose, and describes in general terms the class of the beneficiaries, the trust will be sustained and enforced, although there may be indefiniteness in the declaration and description, and although much may be left to the discretion of the trustees."

This has always been the rule in the District of Columbia.

> Speer *vs.* Colbert, 24 App. D. C., 187; affirmed in 200 U. S., 130.
> Smith *vs.* Gardiner, 36 App. D. C., 485.

Ould *vs.* Washington Hospital, 5 Otto, 303, in which it was held—

> "that the support of foundlings is a charitable use, and greater certainty in designating the beneficiaries intended is not necessary."

Jones *vs.* Habersham, 107 U. S., 174, *supra*, holding valid the devise for the Presbyterian and Congregational Churches above mentioned, also holding valid a devise in trust—

> "to use and appropriate the proceeds arising from the same to the building and erection and endowment of a hospital for females within the city of Savannah, on a permanent basis, into which sick and indigent females are to be admitted and cared for in such manner and on such terms as may be defined and prescribed by the trustees or directresses provided for in this item or clause in my will."

In that case it would appear that one of the objects most prominently in the mind of the testator was the perpetuation of his name in the public mind. His bequest was conditioned upon the trustees under his will keeping in order his burial place, and a devise to the Georgia Historical Society was conditioned upon that society causing to be placed and kept over and against the front porch of their main building, a marble tablet on which should be cut the words "TELFAIR Academy of Arts and Sciences," the word Telfair

(which was testator's name) to be in larger letters and occupying a separate line above the other words. The court held that this desire of the testator did not invalidate the devise, using the following language:

> "The directions tending to perpetuate the memory of the founder do not impair its public character or its legal validity."

In the case of London University *vs.* Yarrow, 23 Beav. 159, "gifts for the instruction of the public in the cure of diseases of quadrupeds or birds useful to man, or for the prevention of cruelty to animals," were upheld. The language quoted is that of Mr. Justice Gray who passed approvingly upon that decision in his opinion in the case of Jackson *vs.* Phillips, 14 Allen, 539, to be hereafter alluded to.

To the same effect see:

> Marsh *vs.* Means, 3 Jur. (N. S.), 790.
> Tatham *vs.* Drummond, 11 Law. Times (N. S.), 325.

It is quite true as contended by appellants, that this Honorable Court in the case of Kain *vs.* Gibboney, 11 Otto, 362, declined to uphold a trust for the benefit of a religious community, which was unincorporated, the membership of which was constantly changing, and no member of which could "ever claim any individual benefit from the bequest, or assert that she is a *cestui que trust.*" But even in that case Mr. Justice Strong in delivering the opinion of the Court intimated that the bequest might have been supported if the gift had been for charitable uses, and showed clearly that this bequest was undoubtedly a private bounty rather than a charitable trust. He laid great stress upon fact that "there is nothing in the will to show that aid to the poor, or *aid to learning*, or aid to religion, or to any humane object" was intended.

Of a like nature was the decision cited by appellants, in Stratton *vs.* Physio. Med. Coll., 149 Mass., 505, in which Mr. Justice Holmes declined to apply the *cy pres* doctrine, which will be hereinafter alluded to, because the bequest was *not* a charitable one, but was to a private unincorporated medical school, conducted for the private gain of the proprietor.

Sufficient may be said in alluding to certain cases cited by appellants on this subject, by referring to the review of the authorities in 6 Cyc., 940, 941, where it is stated that in Connecticut, Virginia, Maryland, and a few other States, much greater strictness in the designation of the beneficiaries is required than is required in England or in the majority of the States of this country, and the rule in those States is opposed to that laid down by this court for the District of Columbia as above demonstrated. The State of New York, which formerly adopted the stricter rule, found it so inequitable that it was deemed expedient to change it by statute. N. Y. Laws (1893) C. 701; 6 Cyc., 942.

Notwithstanding the strictness insisted upon in Maryland with respect to the designation of beneficiaries and the certainty of the objects to be attained, the Maryland Court of Appeals upheld a devise to the Mayor and City Council of Baltimore, in trust for the McDonogh Educational Fund and Institute (an unincorporated municipal agency under the will of McDonogh) to be applied to establishing a chair therein to be called the "Zenus Barnum Chair" to promulgate such course of instruction in said institute as will aid in the practical application of the mechanical arts; the will directing that the property should be so appropriated and applied as to give boys in that institution such useful and practical mechanical education as will enable them to gain a livelihood by skillful manual labor. The court said:

> "This is certainly a benevolent and charitable design, and falls fully within the legal definition of a

charity. It is therefore entitled to the most liberal construction for its support."

Barnum *vs.* Mayor & City Council of Balto., 62 Md., 275.

It is true that in the District of Columbia case of Long *vs.* Gloyd, 25 Wash. Law Rep., 50, the Supreme Court of the District of Columbia, held a devise of the rents and profits of a house "to be devoted under the care and control of the pastor of St. Aloysius Church in the City of Washington, to the education and training to useful life of indigent children," to be void, first, because the will, being made within one month from testator's death, violated the statute then in force, and second, because the objects of the bounty were too uncertain. But the differences between that case and the case at bar are so obvious as to need no further comment.

The same comment is applicable to the case of Coltman *vs.* Moore, 1 MacArthur, 197, where the devise was to the City of Washington "to establish and endow a house of refuge for destitute and reputable females."

The case of Speer *vs.* Mosher, 31 Wash. Law Rep., 630, cited by appellants as authority for the proposition that the devise in this case is void for uncertainty, was subsequently reversed by the Court of Appeals (Colbert *vs.* Speer, 24 App. D. C., 187), and the reversal sustained by this Honorable Court (200 U. S., 130). In that case the devise was to the trustees under the will, to pay $10,000 to the Georgetown University "to be used and held as an endowment for the prosecution of research in the colonial history of Maryland and the territory now embraced in the District of Columbia, and obtaining and preserving archives and papers having relation thereto, and known as the James Ethelbert Morgan fund." The Supreme Court of the District of Columbia held this devise void upon the grounds of ambiguity, and that there was no beneficiary who could complain for

redress for any maladministration; also that the trust was not transmissible in its character to any substituted trustees. The Court of Appeals reversed this ruling, and this Honorable Court affirmed the decision of the Appellate Court in an opinion stating that the opinion of the Court of Appeals "delivered by Chief Justice Alvey (24 App. D. C., 187) is entirely satisfactory to us."

The appellants in their brief refer to the case of Norcross *vs.* Murphy, 44 N. J. Eq., 522, in which the court held, in the first place, that there was no gift of the fund at all, and in the second place, that if the fund was given, the gift was void, as no beneficiary was indicated nor any person appointed to select such beneficiary. Incidentally (and that was all there was in the opinion on this point) it became necessary for the court to quote and comment upon a self-laudatory statement in the testator's will, as follows: "I have lived an honest, true and useful life to my family and friends, and most of my time has been spent in administering truly, freely and virtuously for their benefit and comfort," etc.

The suggestion in appellant's brief that the trust in the case at bar is invalid because "no method nor plan for the selection of the beneficiaries is prescribed," is robbed of all force, when the will itself is read. Under its provisions the trust is to be administered (Rec., p. 5) "under such regulations as to the said trustees and overseers" (i. e., of the University) "may seem best." This gives them the discretion to regulate the method of selecting the candidates for such scholarships.

## Cy Pres Doctrine.

But the appellees in this case contend very confidently that this being a charitable trust, the heirs of the testator, assuming most of their contentions in their brief to be well founded both in fact and law, could in no event have any

interest whatever in the property devised to the George Washington University.

Mr. Justice Story has stated the *cy pres* doctrine as follows:

> "The general rule is, that if the lands are given to a corporation for any charitable uses which the donor contemplates to last forever, the heir never can have the land back again. But if it should become impracticable to execute the charity as expressed, another similar charity will be substituted so long as the corporation exists."
>
> 2 Story's Equity Jur., Sec. 1177.

This rule has been repeatedly approved by this court.

> Russell *vs.* Allen, 107 U. S., 163.
> Fontain *vs.* Ravenel, 17 How., 369.

In the case of the late corporation of Latter Day Saints *vs.* United States, 136 U. S., 1, popularly known as the Mormon Church case, this Honorable Court applied the *cy pres* doctrine.

In dissolving the corporation of the Mormon Church it was held that the property had been donated for "charitable" purposes, which purposes consisted in "promulgating, spreading, and upholding the principles, practices, teachings, and tenets" of the Mormon Church, one of which was the doctrine of polygamy and plurality of wives; that the teaching of polygamy and the doctrine of plurality of wives was contrary to the principles of American civilization, and that the trust could not be supported so long as the property embraced therein was devoted to that purpose. It was held that, notwithstanding the fact that the original purpose of the donors could not be carried out, the property did not revert to them, but that the *cy pres* doctrine must be applied, and the court cited with approval the language of Lord Eldon in Moggridge *vs.* Thackwell, 7 Ves. Jr., 36, 69,

and the comment upon his decision in this case in Hill on Trustees, page *450, which is to the effect that where a testator has expressed his intention to dispose of his estate to "general" charitable uses the trust will be enforced, although no *particular* purpose is expressed, and that—

> "the same construction will also be adopted where a *particular* charitable purpose is declared by the testator which does not exhaust the whole value of the estate; or where the particular trust can not be carried into effect, either for its uncertainty or its illegality, or for want of proper objects. In all these cases the general intention of the testator in favor of charity will be effectuated by the court through a *cy pres* application of the fund."

This court after quoting this language goes on to say:

> "The same propositions are laid down by Mr. Justice Story in his equity jurisprudence, Secs. 167 et seq. But it is unnecessary to make further quotations. These authorities are cited (and many more might be adduced) for the purpose of showing that where property has been devoted to a public or charitable use which can not be carried out on account of some illegality in, or failure of, the object, it does not, according to the general law of charities, revert to the donor or his heirs, or other representatives, but it is applied under the direction of the courts, or of the supreme power in the State, to other charitable objects, lawful in their character, but corresponding, as near as may be, to the original intention of the donor."

A case of greater interest or importance than the Mormon Church case could hardly have been presented to any court. It was argued most ably, considered with the greatest care, and the law very deliberately and positively laid down. The highest court in the land evidently intended to settle for all time the doctrine that when property is devoted to a charitable use the heirs at law of the donor can never recover, but that the *cy pres* doctrine will be applied.

But the appellants have contended in the case at bar that the *cy pres* doctrine can not be applied where the testator indicates that his devise shall be used for no other purpose than that, the specified method of carrying out which, is particularly indicated in the will.

It is pertinent to observe that in the case of Jones *vs.* Habersham, 107 U. S., 174, *supra*, where the property was devised "upon the following terms and conditions, *and not otherwise*," one of the terms and conditions being a positive prohibition upon alienation, this Honorable Court has held that in case of necessity in a charitable trust the property might be alienated and the *cy pres* doctrine applied.

In the case of Betton's Charity, Thomas Betton, in 1723, bequeathed the residue of his estate to the Ironmonger's Company, in trust, "positively forbidding them to diminish the capital sum by giving away any part, or that the interest and profit arising *be applied to any other use or uses* than hereinafter mentioned and directed," viz: one-half of the income yearly for the redemption of British slaves in Turkey or Barbary; one-fourth to charity schools of London, where the education was according to the church of England; and one-fourth "unto necessitated decayed freedmen of the company, their widows and children." The first half of the income greatly accumulated, few such slaves having been found for a century. Lord Brougham held that the court had jurisdiction to apply the surplus income of this moiety and the accumulations as near as might be to the intention of the testator, having regard to the bequest touching British captives and also to the other charitable bequests in the will. Sir Christopher Pepys, M. R., (afterwards Lord Cottenham), ordered the case to be referred to a Master to report a proper scheme for such application. On the return of the Master's report, Lord Langdale approved a scheme to apply the whole fund to the second and third purposes declared in the will. Lord Chancellor Cottenham on

appeal reversed this decree, and upon the ground that the testator had not limited the first charity, like the others, to persons in London, ordered the first moiety to be applied to supporting and assisting charity schools in England and Wales; and this scheme was affirmed in the House of Lords with the concurrence of Lord Chancellor Lyndhurst and Lords Brougham, Cottenham, and Campbell. The court in this case applied the principle upon which Lord Bacon had acted more than two centuries before in the case of Bloomfield *vs.* Stowemarket (1619), Duke, 644.

Atty. Gen. *vs.* Ironmongers' Company, 2 Myl. & K., 576.
2 Beav., 313.
Cr. & Phil., 208.
10 Cl. & Fin., 908.

The Baliol College case is another interesting application of the *cy près* doctrine. The testator, an Episcopalian, made his will in 1679, while the form of religion by law in Scotland and England was Episcopalian. He devised certain real estate in trust to apply the income for the maintenance and education at the University of Oxford, of Scotchmen to be designated by the Vice-Chancellor of that University and the heads of certain colleges, and who should upon their admission, give security to enter into Holy Orders and be sent into Scotland and there remain. After the revolution of 1688, Presbyterianism was re-established in Scotland by act of Parliament, and in 1690 an information was filed by the Attorney-General against the testator's heiress at law, suggesting a pretense by her that as Episcopacy had been abolished in Scotland and the Presbyterian form of worship substituted, the testator's intentions could not be carried into effect and the devise became void and the property reverted to her. The Lords Commissioners of the Great Seal established the devise against her. In 1693, the case came on for further directions before Lord Keeper

Somers, who, acting upon the doctrine that it was within the province of a court of equity to administer the trust upon the principle of *cy pres*, ordered the estate to be conveyed to the six senior fellows of Baliol College, one of the colleges named in the will, to maintain a certain number of Scotch scholars in that college, and in consideration of the privileges enjoyed by such scholars, to apply the surplus income to its library. In 1744, Lord Hardwicke confirmed a scheme which did not impose any condition upon the scholars of taking Holy Orders, thus carrying out the general intention of the trust so far as to educate Scotch scholars at Oxford, though the testator's ultimate object that they should be educated in the Episcopal form of Church Government to take part in the established religion of Scotland, could not, by reason of the change of law since his death, be effected. Upon a new information filed at the relation of certain Scotch Episcopalians, the House of Lords, in 1848, held that the charity must continue to be administered according to this decree.

Atty. Gen. *vs.* Guise, 2 Vern., 266.
Atty. Gen. *vs.* Baliol College, 9 Mod., 407.
Atty. Gen. *vs.* Glasgow College, 2 Colly. R., 665; S. C., 1 H. L. cas., 800.

Queen Elizabeth established a hospital for forty lepers and made the inmates a corporation. After leprosy had become almost extinct in England and the members of the corporation reduced to three, an information was filed by the Attorney-General alleging that the corporation was dissolved and that the donor's heirs claimed the property. Lord Eldon held that they were not entitled, and approved a scheme for the application of the revenues to a general infirmary, reserving a preference to all lepers who might offer themselves.

Atty. Gen. *vs.* Hicks, 3 Bro. C. C., 166, note.
Highmore on Mortmain, 336, 354.

All these cases and many others both in this country and in England were cited with approval by Mr. Justice Gray in his very exhaustive opinion in the case of Jackson *vs.* Phillips, 14 Allen, 539. In that case the testator had left property in trust to create a public sentiment to put an end to negro slavery, and also for the benefit of fugitive slaves who might escape from the slaveholding States. After slavery was abolished, it was contended that the trust had become impossible of execution, but the court applied the *cy pres* doctrine and ordered the fund to be paid over to the New England branch of the Freedmen's Union Commission, to be employed and expended by them in promoting the education, support and interests generally of persons who had lately been emancipated from slavery.

In the case of Adams Female Academy *vs.* Adams, 65 N. H., 225, a fund was by law bequeathed to trustees "to establish a female academy," etc. When it became impossible to carry out the testator's intentions, the testator's heirs claimed the property, but it was held that the fund might be used by the trustees, in the application of the *cy pres* doctrine, for the support of a public school at the same place where the female academy was to exist. To the same effect are the following cases:

Cincinnati *vs.* McTheckin, 6 Ohio C. C., 188.
Weeks *vs.* Hobson, 150 Mass., 377.
Potter *vs.* Thornton, 7 R. I., 252.
McIntire's Admr. *vs.* Zanesville, 17 Ohio St., 352.
Crerar *vs.* Williams, 145 Ill., 625.
Ingraham *vs.* Ingraham, 169 Ill., 432.

As against this the appellants cite in their brief Re Prison Charities, 16 Eq., 129, in which the court declined to approve the particular scheme devised for carrying out the charitable bequest under the will involved. Why this case was cited by the appellants as an authority against the application of the *cy pres* doctrine is not apparent, because the

vice-chancelor in his opinion stated "that it is not disputed on the part of the objectors that the *cy pres* doctrine can be applied." He held that it could be and should be applied: disallowed the claims of the testator's heirs, and though he disapproved of the particular scheme suggested, referred the case back to the appropriate officials with suggestions to them in aid of drafting another scheme which would be more nearly in accordance with what the court believed to be the testator's original intention.

Certain States (as, for instance, New York) have not always countenanced the *cy pres* doctrine. In such States decisions can, of course, be found to the effect that upon the failure to execute a trust, the trust property may revert to the testator's heirs. But it is respectfully submitted that this Honorable Court has repeatedly applied the *cy pres* doctrine in cases like the present.

The case of *Hopkins vs. Grimshaw*, 165 U. S., 342, does not establish a doctrine at variance with that here contended for. The opinion in that case was written by Mr. Justice Gray, who likewise wrote the opinion of the Massachusetts Court in Jackson *vs.* Phillips, *supra*, in which the *cy pres* doctrine was so staunchly upheld. In the case of *Hopkins vs. Grimshaw*, *supra*, however, there was no room for the application of the *cy pres* doctrine. The trust was for the "Union Beneficial Society of Washington city for the sole use and benefit of the Union Beneficial Society of the city of Washington as aforesaid, for a burial ground, and for no other purpose whatever." By order of the Washington Board of Health passed many years ago the use of the ground as a cemetery was compulsorily abandoned and all the bodies exhumed, and the society dissolved and had become extinct. Furthermore, it was deemed by the court doubtful whether a burial ground, the use of which was restricted by the society's charter, to its own members, could be considered a public charitable use. Under these circum-

stances the donor's heirs were held entitled to the property.

As will appear by a perusal of the will in question (Rec., p. 5) the *general* purpose of the testator was "to make some contribution to the Navy of the United States and to that end to establish a means for the education of such young men as may be willing to profit therefrom in the branches of education best fitted to prepare them for officers of the line in the navy of the United States, or for the places of mates or captains in the Merchant Marine Service of the United States."

He as an officer of the United States Navy was thoroughly impressed with the view that in times of peace we should prepare for war. He knew that the best method of accomplishing this was to train young men so that they should be better fitted for active duty if ever called upon to serve under their country's flag. So far as his *general* purpose was concerned, he did not deem it important that they should ever, as a matter of fact, enter either the Naval Academy or the Merchant Marine Service, provided they should become better fitted therefor should the necessity ever arise. And in the expression of his *particular* purpose he nowhere made it a condition of their receiving the benefits of this bequest, that they should actually enter the service; nor would such a condition be practicable. His *general* purpose would therefore be effectuated by educating them in preparation for such service.

In furtherance of the accomplishment of his general purpose he evidently deemed that this could be *particularly* well accomplished by affording (primarily in the Columbian University, and secondarily in the Johns Hopkins University) a free education to such young men as might desire to take advantage of said endowment by way of their preparation for entrance into the Naval Academy, or into the Merchant Marine Service.

Even if it were the fact (and the Record, pp. 53-55, 57, 65, 74, shows that the fact is otherwise), that none of the

students profiting by this endowment either could or did actually enter either service, and that neither university named could afford the designated instruction, it would be immaterial. The testator's main purpose was to *train men* for service; and this training could be afforded in some other educational institution and men thus fitted for "officers of the navy of of the United States, or for the places of mates or captains in the Merchant Marine Service of the United States."

There could be no clearer case for the application of the *cy pres* doctrine than the case at bar.

To contend that there is no "Merchant Marine Service of the United States" is a mere play upon words.

Appellees contend that upon any one of the numerous grounds urged by them, the decree below should be affirmed.

Respectfully submitted.

WALTER C. CLEPHANE,
*Solicitor for Appellees.*

## TAYLOR *v.* COLUMBIAN UNIVERSITY (NOW KNOWN IN LAW AS GEORGE WASHINGTON UNIVERSITY).

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 41. Argued November 6, 1912.—Decided December 2, 1912.

A devise and bequest to a university to establish an endowment fund for free education of young men for preparation for entrance to the United States Naval Academy or to fit them to become mates or masters in the Merchant Marine Service of the United States, *held*

in this case to create a charitable trust that is capable of execution and one which is not void as too indefinite for execution.

Where testator names one institution to carry out a trust and names another as alternate in case the former shall not be able to perform, the court will not declare the trust impossible of execution on account of the failure of the first-named institution to carry it out until after the second named has also tried and failed.

Conclusions as to facts reached by two lower courts will not be disturbed by this court unless manifestly erroneous.

In establishing an educational endowment fund the words "Merchant Marine Service of the United States" have a definite meaning sufficient to sustain the trust.

25 App. D. C. 124, affirmed.

THE facts, which involve the construction and validity of a testamentary trust, are stated in the opinion.

*Mr. Henry E. Davis,* with whom *Mr. J. K. M. Norton* was on the brief, for appellants:

The devise does not create a charitable trust.

Admiral Powell made no gift for education. He made a gift for the Navy of the United States. It must be apparent that his purpose was not to aid any university, or any of its branches, nor to aid education; his sole purpose and object, as he expressly declared, was—"to make some contribution to the Navy of the United States."

The carrying out of the bequest in the way designated, cannot, in any way, help the Navy, which was the sole object of his bounty.

The Court of Appeals construed the bequest as a sort of educational trust, and so sustained it as a charity, citing as authority *Vidal* v. *Girard,* 2 How. 127; *Ould* v. *Washington Hospital,* 95 U. S. 303; *Spear* v. *Whitney,* 24 App. D. C. 187.

In each of these cases, however, the intent was to create a charity, and the thing created was a charity. The Powell bequest was nothing like these cases.

The court fell into the error of supposing that Admiral Powell intended to aid in education of some sort. If this

had been his purpose he would have created an endowment, the income therefrom to be used to give such free instruction as he might designate.

The bequest does not come under the broadest definition of charitable bequests. Words and Phrases, 1075.

If it does not appear from the instrument that the donor intended a general public charity, it will not be carried out at all, if, by reason of its uncertainty or otherwise, it cannot be so carried out as to accomplish the object specified by the donor. *Kain* v. *Gibboney*, 101 U. S. 362; *Stratton* v. *Physio-Med. College*, 149 Massachusetts, 505; and see Desty's note to this case, 5 L. R. A. 35; *People* v. *Powers*, 147 N. Y. 104.

In England, under the law of charitable uses, bequests for charity have been sustained; whilst benevolent gifts, without a designated beneficiary, have been held too indefinite, and therefore void. See *Norris* v. *Thompson*, 19 N. J. Eq. 307; Perry on Trusts, § 709; *In re Randell*, 38 Ch. D. 213 (Eng., 1888); *Re Prison Charities*, 16 Eq. 129 (Eng., 1873); Story on Eq. Jur., § 1182.

The devise in question, made for the definite purpose of helping the Navy or paying a debt to the marine profession, can in no way accomplish the sole purpose of the gift, and so must fail.

If the devise be held to be a charitable trust, it is yet too uncertain and indefinite to be carried out. Under the devise it is uncertain what young men are to partake of the benefit; no method nor plan for the selection of the beneficiaries is prescribed or provided.

There has never been a bequest that more absolutely or perfectly fulfilled all the conditions of a void bequest. *Norcross* v. *Murphy*, 44 N. J. Eq. 522; *Tilden* v. *Green*, 130 N. Y. 29.

If the charity is general and indefinite and no plan or scheme is prescribed, and no discretion is given to select the beneficiaries, it does not admit of judicial administra-

tion. The will should prescribe some mode of selection, or give some person discretionary power to select. *Fairfield* v. *Lawson*, 50 Connecticut, 501, 513; *Beardsley* v. *Bridgeport*, 53 Connecticut, 489; *Hughes* v. *Daly*, 49 Connecticut, 34; *White* v. *Fisk*, 22 Connecticut, 30, 53; *Grimes* v. *Harmon*, 35 Indiana, 198; *Church* v. *Mott*, 7 Paige, 77; *Goodell* v. *Union Asso.*, 29 N. J. Eq. 32.

In South Carolina the English doctrine of charities has been generally accepted, but there, as in England and in the other States of this country, where a particular charity has not been specified, but the charity is of a general nature, without the appointment of trustees to select the beneficiaries, the courts will not devise a scheme for carrying it out. *Atty. General* v. *Jolly*, 1 Rich. Eq. 99; *Gibson* v. *McCall*, 1 Rich. 174.

In Tennessee charitable bequests are upheld quite broadly. *Green* v. *Allen*, 5 Humph. 204; *State* v. *Smith*, 16 Lea, 662; *State* v. *Ellison*, 4 Baxt. 99; 2 Cold. 80; 1 Swan. 360; 7 Heisk. 694.

But the Supreme Court of that State has held that the beneficiary of the trust, or the class that is to take, must be designated by the testator, so that some one or class will have the right to compel the enforcement. *Johnson* v. *Johnson*, 92 Tennessee, 571.

In Maryland the principle is clearly recognized and firmly established, that a trust, to be upheld, must be of such a nature that the *cestuis que trust* are defined and are capable of enforcing its execution by proceedings in a court of chancery. *Maught, Exr.*, v. *Getzendanner*, 65 Maryland, 529, 533; *S. C.*, 72 Maryland, 67; *M. E. Church* v. *Smith*, 56 Maryland, 362; *Dashiell* v. *Atty. Genl.*, 5 Harris and Johnson, 392, and 6 H. and J. 1; *Yingling* v. *Miller*, 77 Maryland, 104; *Rizer* v. *Perry*, 58 Maryland, 112; *Needles* v. *Martin*, 33 Maryland, 609; *Wheeler* v. *Smith*, 9 How. 55; *Trinity M. E. Church* v. *Baker*, 91 Maryland, 539 (decided June, 1900); and see

*Pratt* v. *Sheppard*, 88 Maryland, 610, which reviews all the Maryland decisions above cited, and *Gambell* v. *Trippe*, 75 Maryland, 252; *Barnum* v. *Mayor of Baltimore*, 62 Maryland, 275, 292.

The Maryland decisions have been followed by the courts in the District of Columbia, and they expound the principles as held by our courts in all cases like the one at bar. *Long* v. *Gloyd*, 25 Wash. Law Rep. 50; *Coltman* v. *Moore*, 1 MacArthur, 197. The trustee has not been able to carry out the trust so as to accomplish the purpose of the testator.

*Mr. Walter C. Clephane* for appellees.

Mr. Justice McKenna delivered the opinion of the court.

Suit by appellants as heirs of Levin M. Powell to declare void a trust created by his will and to recover certain real estate held by the George Washington University, the legal successor of the Columbian University.

Levin M. Powell was, when he made his will, an admiral in the United States Navy on the retired list. The clause which creates the trust is as follows:

"Item: Fifth, it being my wish and desire to make some contribution to the Navy of the United States, of which I have been for so many years, I hope, a worthy member, and so in a measure to pay off the debt I feel I owe the honorable profession I have pursued through a long lifetime, and to that end to establish in the Columbian University in the District of Columbia, in a manner most conducive for that purpose, a means for the education of such young men as may be willing to profit therefrom in the branches of education best fitted to prepare them for officers of the line in the Navy of the United States, or for the places of mates or captains in the merchant marine

service of the United States. I do hereby give, devise, and bequeath to the said Columbian University and its successors all those certain pieces or parcels of ground situate and lying in said city of Washington, . . . in trust for the purposes following, and for no other purpose whatever—that is, in trust to create an endowment to be known as the Admiral Powell endowment, and with that view to take the said property, and the same to rent from year to year or to lease for a term of years as to the trustees and overseers of said university shall seem best; and the rents, issues, and profits arising therefrom, after first paying out of the same the taxes, insurance, repairs, and other expenses, to devote as far as the same will go, under such regulations as to the said trustees and overseers may seem best, to the free education of such young men as may desire to take advantage of the said endowment by way of their preparation for entrance into the Naval Academy at Annapolis, Maryland, or such as may fit them to become mates or masters in the merchant marine service of the United States, such preparation to be confined in the case of each young man so embracing the advantages of the said endowment to one year, and to include principally the studies following,—that is to say, arithmetic, geometry, trigonometry, and astronomy, with the use of astronomical instruments, the construction of charts, and the application of this knowledge to hydrographical survey by latitude and longitude, and if possible such study as will give to such young men a knowledge of scientific voyages of discovery, and other matters relating to war and commerce on the high seas; and it is further my desire that this endowment shall, if possible, embrace in its benefits such apprentices as, having filled their time in the great steam manufactory establishments of the country, may apply for appointment from civil life in the steam engineer department of the United States Navy, to such I would like to have a year's

education afforded under such regulations as the president and faculty of the university may think proper. And should it at any time for any reason be impossible to carry into effect the trusts, provisions, and conditions having relation to and herein imposed upon this bequest by me made for the creation of the endowment described on the part of the said Columbian University, or should it be made manifest at any time that the said trust is not being administered in accordance with my wishes and desires, and in conformity with the conditions specified, then and in such case it is my will and desire that the said endowment shall be placed in other hands, and to that end, and upon the happening of the contingency mentioned, I do hereby give, devise and bequeath the said property to the Johns Hopkins University of Baltimore, in the State of Maryland, and its successors, to be taken and held by the said university or the officers thereof proper for that purpose, upon the trusts and for the purposes hereinbefore particularly set forth in the bequest of said property to the Columbian University, in such manner that the purposes of the said endowment as by me indicated may be fully carried into effect."

The bill alleges that the Columbian University, supposing it had the right to execute the trust, took possession of the property and has let it to various tenants, and for more than sixteen years has issued a catalogue publishing its classes, the names of all of its students, instructors and officers, and the many and various schools of education it maintains, and that the catalogue is widely circulated throughout the United States. The University has, it is alleged, for a like period advertised "The Powell Scholarship," and notwithstanding the wide circulation of the advertisement the University has been unable to execute the trust.

It is alleged that the devise is so indefinite and the trust intended to be created so uncertain of its objects and sub-

jects that it is impossible of execution by the Columbian University, or by the Johns Hopkins University, and has in no wise been executed by either of them; and that therefore the trust is wholly void and of no effect. The collection of the rents and profits by the Columbian University is alleged. It was prayed that the trust be declared void and that the Columbian University be required to account for the rents and profits collected by it.

A demurrer to the bill was overruled, which ruling was sustained by the Court of Appeals. 25 App. D. C. 124.

The Court of Appeals held that the devise created a special charitable trust and that it was not void for uncertainty or incapacity of execution apparent upon its face. The court, however, held that the nineteenth paragraph of the bill, which alleged that the impossibility of the execution of the trust had been demonstrated, stated a cause of action and remanded the case for further proceedings. Upon the return of the case to the Supreme Court the University answered, by which it traversed the allegations of the bill and alleged in effect that it undertook the trust and has ever since efficiently executed it. It further alleged that its co-defendant, the Johns Hopkins University, is able, ready and willing to accept and administer the trust at any time if for any reason it should be impossible for it, the Columbian University, to administer the same, or "should fail to carry out the trust in that regard reposed in it."

Testimony was taken, and the trial court found from the facts proved the following:

"First. From the testimony adduced by plaintiffs upon this point, it appears that beginning with the scholastic year 1885-6 (the will of Powell was probated in 1885) the defendant Columbian University published in its annual catalogues that under the terms of the Admiral Powell Endowment free scholarships would be given to a limited

number of pupils who were preparing for admission to the United States Naval Academy at Annapolis. This notice was in some issues of the catalogue more explicit, giving in greater detail the terms of the trust, and in other issues courses of study were given from which the special course contemplated by the terms of the trust might be selected. It further appears from the records of the University that beginning with the scholastic year 1891–2 twenty-four young men actually took a course of study under the Powell Scholarships, in some cases the same man being permitted to pursue the course for more than one year. Of this number at least two entered the Naval Academy. I find nothing in the evidence showing the net income derived by the University from the trust property, but there is nothing to show that the full net income thereof was not applied to the administration of the trust. I am of the opinion that the evidence adduced is not sufficient to demonstrate the 'incapacity' of the execution of the trust."

Second. Granting that the testimony was sufficient to demonstrate the inability of the Columbian University to execute the trust, it did not appear that the Johns Hopkins University might not be able to do so, and that until it "has tried and failed the court would certainly not be justified in frustrating the intention of the testator by bestowing the property upon" the plaintiffs, "related so remotely to him."

The Court of Appeals practically affirmed these conclusions. The court said that while the testimony did not show that the expectations of the testator have been fully answered, and that it had failed "to show that the entire net proceeds of the trust property have been devoted exclusively to the purposes of the trust, and none other, it was sufficient to show that the trust can be executed, as well as that, in some measure, it is being executed." The court said further that it was unimportant to con-

sider defects of execution of the trust by the Columbian University as that possibility was contemplated by the testator and the Johns Hopkins University appointed as an alternate trustee, and as its ability to execute the trust was asserted and not denied "it must be taken as true." These conclusions, so far as they depend upon the testimony, not being manifestly erroneous we must accept, being the decisions of two courts.

The legal proposition, however, which determined the ruling upon the demurrer and the first decision of the Court of Appeals is open for consideration. That court, as we have seen, decided that the will created a special charitable trust and that the trust was not void for uncertainty or incapacity of execution apparent upon its face. These propositions are contested. It is contended, first, that the "object of the testator must be clearly charitable; and, second, the thing he directs to be done must, in its execution, accomplish the charitable object, in some degree at least." It is argued that these conditions are not fulfilled by the devise because, it is said, "the testator had no idea of assisting either of the universities named, or of assisting any one merely to get an education," and, further, that "his sole purpose, as he himself stated, was 'to make some contribution to the Navy of the United States.'"

The devise, we think, satisfies the tests. The object of the testator was not "to make some contribution to the Navy of the United States." Such contribution was but an incidental effect, or rather, the mere inducement to the testator's benefaction. The testator's special object was, so far as his property would accomplish it, to give to young men not having the pecuniary ability to prepare themselves the opportunity to do so. Preparatory training was necessary; he made it available, to the extent of his means, to young men who otherwise could not bear the expense. And he knew the conditions of appointment,

in whom it rested and the contingencies upon which it depended. If the field of candidacy was limited, he knew that he was helping some to aspire and qualify to succeed. The knowledge and help were definite. He certainly could not designate the individuals. That could be done, and necessarily was left to be done, by his trustees, one or the other of them. The purpose of the testator has not been disappointed. In other words, the charitable object has been accomplished, "in some degree at least"—the test which appellants apply. The finding is that at least two out of twenty-four of those who availed themselves of the scholarships instituted by the Columbian University entered the Naval Academy. We can suppose a better result from a better administration of the trust.

The testator had in view another career for young men besides the Navy which could be attained by the same means, that is, "the places of mates or captains in the Merchant Marine Service of the United States." But it is said that "there is no such thing" as the Merchant Marine Service "known to the law" and that "therefore the meaning of the testator in this behalf is left open to ascertainment outside of the testator's language and the provision of the will." The criticism is too exact. The Merchant Marine was and is a very definite and substantial thing and had unmistakable definition in general, if not in legal, nomenclature. The meaning of a testator is not required to be found in law lexicons; the usages of popular speech may furnish a guide to it. Besides, the words "Merchant Marine" receive certain meaning from their context, and it is easy to put one's self in the place of the sailor testator and appreciate his impulse and purpose. His relatives were remote, his property not large, and he had been an officer in the United States Navy. He desired to assist others to become also officers in that service or in a cognate service. He knew the equipment necessary and he prescribed it. He chose proper educa-

tional instruments to confer the equipment and to select and qualify the candidates for the designated services. The purpose of the testator was worthy, and there is nothing in reason or authority which requires us to pronounce it legally insufficient.

*Decree affirmed.*